

**PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS**

REGULATIONS

**Subpart A—General**

- Sec.
- 25.01 Authority, purposes, scope, and severability.
- 25.02 Effect of CRA performance on applications.
- 25.03 Definitions.

**Subpart B—Qualifying Activities**

- 25.04 Qualifying activities criteria.
- 25.05 Qualifying activities confirmation and illustrative list.
- 25.06 CRA desert confirmation.
- 25.07 Qualifying activities quantification.
- 25.08 Qualifying activities value.

**Subpart C—Assessment Area**

- 25.09 Assessment area.

**Subpart D—Performance Evaluations**

- 25.10 Performance standards and ratings, in general.
- 25.11 CRA evaluation measure.
- 25.12 Retail lending distribution tests.
- 25.13 General performance standards and presumptive rating.
- 25.14 Small and intermediate bank performance standards.
- 25.15 Wholesale and limited purpose bank performance standards.
- 25.16 Consideration of performance context.
- 25.17 Discriminatory and other illegal credit practices.
- 25.18 Strategic plan.
- 25.19 Assigned ratings.
- 25.20 State/multistate metropolitan statistical area assigned rating.

**Subpart E—Data Collection, Recordkeeping, and Reporting**

- 25.21 Data collection for banks evaluated under the general performance standards in § 25.13 or a strategic plan under § 25.18.
- 25.22 Retail domestic deposit data collection for small and intermediate banks evaluated under the small and intermediate bank performance standards in § 25.14.
- 25.23 Data collection for wholesale and limited purpose banks evaluated under the wholesale and limited purpose bank performance standards in § 25.15.

- 25.24 Activity location.
- 25.25 Recordkeeping.
- 25.26 Reporting for banks evaluated under the general performance standards in § 25.13, the wholesale and limited purpose bank performance standards in § 25.15, or a strategic plan under § 25.18.
- 25.27 Public disclosures.
- 25.28 Content and availability of public file.
- 25.29 Availability of planned evaluation schedule.
- 25.30 Public notice by banks.

**Subpart F—Prohibition Against Use of Interstate Branches Primarily for Deposit Production**

- 25.31 Purpose and scope.
- 25.32 Definitions.
- 25.33 Loan-to-deposit ratio screen.
- 25.34 Credit needs determination.
- 25.35 Sanctions.

APPENDIX A TO PART 25—SMALL BANK, INTERMEDIATE BANK, WHOLESALE BANK, AND LIMITED PURPOSE BANK RATINGS

APPENDIX B TO PART 25—COMMUNITY REINVESTMENT ACT NOTICE

APPENDIX C TO PART 25—COMMUNITY REINVESTMENT ACT REGULATIONS (ALTERNATIVE COMPLIANCE)

AUTHORITY: 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1462a, 1463, 1464, 1814, 1816, 1828(c), 1835a, 2901 through 2908, 3101 through 3111, and 5412(b)(2)(B).

SOURCE: 43 FR 47146, Oct. 12, 1978, unless otherwise noted.

REGULATIONS

**Subpart A—General**

SOURCE: 85 FR 34792, June 5, 2020, unless otherwise noted.

**§ 25.01 Authority, purposes, scope, and severability.**

(a) *Authority.* The authority for this part is 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1462a, 1463, 1464, 1814, 1816, 1828(c), 1835a, 2901 through 2907, and 3101 through 3111.

(b) *Purposes.* In enacting the Community Reinvestment Act (CRA), Congress required each appropriate Federal financial supervisory agency to assess an institution's record of meeting the credit needs of its entire community, including low- and moderate-income communities, consistent with the

## § 25.02

## 12 CFR Ch. I (1–1–21 Edition)

safe and sound operation of such institution, and take that record into account in its evaluation of an application for a deposit facility by such institution. This part is intended to carry out the purposes of the CRA by:

(1) Establishing the framework and criteria by which the Office of the Comptroller of the Currency (OCC) assesses a bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income communities, consistent with the safe and sound operation of the bank; and

(2) Providing that the OCC takes that record into account in considering certain applications.

(c) *Scope*—(1) *General*. This part applies to all banks as defined in § 25.03 except as provided in paragraphs (c)(2) and (c)(3) of this section.

(2) *Federal branches and agencies*. (i) This part applies to all insured Federal branches and to any Federal branch that is uninsured that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)).

(ii) Except as provided in paragraph (c)(2)(i) of this section, this part does not apply to Federal branches that are uninsured, limited Federal branches, or Federal agencies, as those terms are defined in part 28 of this chapter.

(3) *Certain exempt banks*. This part does not apply to banks that do not perform commercial or retail banking services by granting credit or offering credit-related products or services to the public in the ordinary course of business, other than as incident to their specialized operations and done on an accommodation basis. These banks include banker's banks, as defined in 12 U.S.C. 24 (Seventh), and banks that engage only in one or more of the following activities: Providing cash management-controlled disbursement services or serving as correspondent banks, trust companies, or clearing agents.

(4) *Compliance dates*. (i) Banks other than small, intermediate, wholesale, and limited purpose banks must comply with §§ 25.07–25.13, 25.21, 25.25, and 25.26 by January 1, 2023.

(ii) Wholesale and limited purposes banks must comply with §§ 25.09, 25.23, 25.25, and 25.26 by January 1, 2023.

(iii) Small and intermediate banks must comply with §§ 25.09, 25.22, and 25.25, as applicable, by January 1, 2024.

(5) *Transition provision*. To provide for an orderly transition, for any CRA performance evaluation conducted on or after October 1, 2020, and before the compliance date of this part that is applicable to the bank being evaluated, the OCC may permit a bank to rely on the applicable performance standards and tests, procedures, processes, definitions or other element of:

(i) Parts 25 or 195 of this chapter, as applicable, in effect on the date prior to October 1, 2020 (as set forth in appendix C of this part); or

(ii) Part 25 set forth in this final rule.

(6) *Expiration date*. Parts 25 and 195 of this chapter that are in effect on the date prior to October 1, 2020 (as set forth in appendix C of this part) expire on January 1, 2024.

(d) *Severability*. Each section of this part is severable from the other sections of this Part. If any section or any provision of any section is held to be invalid or stayed for any reason, it is the OCC's intention that the remaining sections and provisions of this part shall continue in effect.

### § 25.02 Effect of CRA performance on applications.

(a) *CRA performance*. Among other factors, the OCC takes into account the record of performance under the CRA of each applicant bank in considering an application for:

(1) The establishment of a domestic branch or non-branch deposit-taking facility;

(2) The relocation of the main office or a domestic branch;

(3) Under the Bank Merger Act (12 U.S.C. 1828(c)), the merger or consolidation with or the acquisition of assets or assumption of liabilities of an insured depository institution;

(4) The conversion of an insured depository institution to a national bank charter;

(5) A savings association charter; and

(6) Acquisitions subject to section 10(e) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)).

(b) *Charter application.* An applicant (other than an insured depository institution) for a national bank or a Federal savings association charter must submit with its application a description of how it will meet its CRA objectives, if applicable. The OCC takes the description into account in considering the application and may deny or condition approval on that basis.

(c) *Interested parties.* The OCC takes into account any views expressed by interested parties that are submitted in accordance with the OCC's procedures set forth in part 5 of this chapter in considering CRA performance in an application listed in paragraphs (a) and (b) of this section.

(d) *Denial or conditional approval of application.* A bank's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

(e) *Insured depository institution.* For purposes of this section, the term "insured depository institution" has the same meaning as this term is given in 12 U.S.C. 1813.

### § 25.03 Definitions.

For purposes of this part, the following definitions apply:

*Activity* means a loan, investment, or service by a bank.

*Affiliate* has the meaning this term is given in Regulation W, 12 CFR 223.2(a) and (b), as of October 1, 2020 and includes non-member banks.

*Area median income* means:

(1) The median family income for the metropolitan statistical area, if a person or census tract is located in a metropolitan statistical area, or for the metropolitan division, if a person or census tract is located in a metropolitan statistical area that has been subdivided into metropolitan divisions; or

(2) The statewide nonmetropolitan median family income, if a person or census tract is located outside a metropolitan statistical area.

*Assessment area* means a geographic area delineated in accordance with § 25.09.

*Automated teller machine (ATM)* means an automated banking facility owned or operated by, or operated exclusively for, the bank at which deposits are received, cash dispersed, or money lent.

*Average* means the statistical mean.

*Bank* means a national bank (including a Federal branch as defined in part 28 of this chapter) or a savings association, the deposits of which are insured by the FDIC pursuant to Chapter 16 of Title 12, as described in 12 U.S.C. 1813(c)(2), except as provided in § 25.01(c).

*Branch* means a staffed banking facility authorized as a branch, whether shared or unshared, including, for example, a mini-branch in a grocery store or a branch operated in conjunction with any other local business or non-profit organization. The term "branch" only includes a "domestic branch" as that term is defined in section 3(o) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1813(o)).

*Call Report* means Consolidated Reports of Condition and Income as filed under 12 U.S.C. 161.

*Commitment to lend* means a legally binding commitment to extend credit, such as a standby letter of credit.

*Community Development Financial Institution* has the same meaning as this term is given in 12 U.S.C. 4702(5).

*Community development investment* means a lawful investment, membership share, deposit, legally binding commitment to invest that is reported on the Call Report, Schedule RC-L, or monetary or in-kind donation that meets the criteria of § 25.04(c).

*Community development loan* means a loan, line of credit, or commitment to lend that meets the criteria of § 25.04(c).

*Community development services* means bank employee time spent volunteering as a representative of the bank on activities that meet the criteria of § 25.04(c) or supporting activities that meet the criteria of § 25.04(c)(2), (11). A bank employee may receive expense reimbursement for volunteer time related to the community development activity.

*Compensation* means the median hourly compensation value (*i.e.*, total salaries and benefits divided by full-time equivalent employees) for the banking industry based on aggregate Call Report data for median salaries and employee benefits from Schedule RI, Item 7.a and the median number of

## § 25.03

## 12 CFR Ch. I (1–1–21 Edition)

full-time equivalent employees from Schedule RI Memorandum Item 5.

*Consumer loan* means a loan reported on the Call Report, Schedule RC–C, Loans and Lease Financing Receivables, Part 1, Item 6, Loans to individuals for household, family, and other personal expenditures other than overdraft plans that is a:

(1) *Other revolving credit plan*, which is an extension of credit to an individual for household, family, and other personal expenditures arising from revolving credit plans not accessed by credit cards;

(2) *Automobile loan*, which is a consumer loan extended for the purpose of purchasing new and used passenger cars and other vehicles such as minivans, vans, sport-utility vehicles, pickup trucks, and similar light trucks for personal use; and

(3) *Other consumer loan*, which is any other loan to an individual for household, family, and other personal expenditures (other than those that meet the definition of a “loan secured by real estate” and other than those for purchasing or carrying securities), including *low-cost education loans*, which is any private education loan, as defined in section 140(a)(8) of the Truth in Lending Act (15 U.S.C. 1650(a)(8)) (including a loan under a state or local education loan program), originated by the bank for a student at an “institution of higher education,” as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

*CRA desert* means an area that the OCC has confirmed to be a CRA desert under § 25.06 because it has significant unmet community development or retail lending needs and where:

(1) Few banks have branches or non-branch deposit-taking facilities;

(2) There is less retail or community development lending than would be ex-

pected based on demographic or other factors; or

(3) The area lacks community development organizations or infrastructure.

*CRA-eligible business* means a business that has gross annual revenues of no greater than \$1.6 million. The OCC will adjust the \$1.6 million threshold for inflation every five years, and the adjustment to the threshold will be made publicly available.

*CRA-eligible farm* means a farm with gross annual revenues of no greater than \$1.6 million. The OCC will adjust the \$1.6 million threshold for inflation every five years, and the adjustment to the threshold will be made publicly available.

*Distressed area* means a middle-income census tract identified by the OCC that meets one or more of the following conditions:

(1) An unemployment rate of at least 1.5 times the national average;

(2) A poverty rate of 20 percent or more; or

(3) A population loss of 10 percent or more between the previous and most recent decennial census or a net migration loss of five percent or more over the five-year period preceding the most recent census.

*Essential community facility* means a public facility, including, but not limited to, a school, library, park, hospital or health care facility, and public safety facility.

*Essential infrastructure* means:

(1) Public infrastructure, including, but not limited to, public roads, bridges, tunnels; and

(2) Essential telecommunications infrastructure, mass transit, water supply and distribution, utilities supply and distribution, sewage treatment and collection, and industrial parks.

*Family farm* has the same meaning as the term is given by the Farm Service Agency of the U.S. Department of Agriculture in 7 CFR 761.2(b) as of the effective date of this rule.

*Financing* means permissible equity or debt facilities, such as loans, lines of credit, bonds, private funds, securities, or other permissible investments.

*Home mortgage loan* means a loan reported on the Call Report, Schedule

RC-C, Loans and Lease Financing Receivables, Part I, specifically:

(1) Item 1.a.(1) 1-4 family residential construction loans;

(2) Item 1.c Loans secured by 1-4 family residential properties (includes closed-end and open-end loans); or

(3) Item 1.d Loans secured by multi-family (5 or more) residential properties.

*Income levels are:*

(1) *Low-income*, which means an individual income that is less than 50 percent of the area median income or a median family income that is less than 50 percent in a census tract.

(2) *Moderate-income*, which means an individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 percent and less than 80 percent in a census tract.

(3) *Middle-income*, which means an individual income that is at least 80 percent and less than 120 percent of the area median income, or a median family income that is at least 80 percent and less than 120 percent in a census tract.

(4) *Upper-income*, which means an individual income that is 120 percent or more of the area median income, or a median family income that is 120 percent or more in a census tract.

*Indian country* means an area that is

(1) Covered by 18 U.S.C. 1151; or

(2) A Tribal Census Tract, an Oklahoma Tribal Statistical Area, a Tribal Designated Statistical Area, an Alaskan Native Village Statistical Area, or an American Indian Joint-Use Area, as those terms are defined by the Census Bureau.

*In-kind donation* means a contribution of goods, commodities, or other non-monetary resources.

*Intermediate bank* means a bank with assets that exceed the small bank asset size threshold provided in the small bank definition, as adjusted, and that had assets of \$2.5 billion or less in four of the previous five calendar quarters; the dollar figures in this definition shall be adjusted annually and published by the OCC, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not sea-

sonally adjusted, for each twelve-month period ending in November, with rounding to the nearest \$100,000.

*Limited purpose bank* means a bank that offers only a narrow product line (such as automobile loans) to a regional or broader market and for which a designation as a limited purpose bank is in effect, in accordance with §25.15(b).

*Major retail lending product line* means a bank's retail lending product line that for the two years prior to the beginning of the evaluation period:

(1) Composed at least 15 percent of the bank's dollar volume of total retail loan originations and was the first or second largest retail lending product line by dollar volume; and

(2) At the bank's option, composed at least 15 percent of the bank's dollar volume of total retail loan originations.

*Low-income credit union* has the same meaning as this term is given in 12 CFR 701.34.

*Metropolitan division* has the same meaning as published in the Office of Management and Budget's Standards for Delineating Metropolitan and Micropolitan Statistical Areas or successor publication thereof.

*Metropolitan statistical area* has the same meaning as published in the Office of Management and Budget's Standards for Delineating Metropolitan and Micropolitan Statistical Areas or successor publication thereof.

*Military bank* means a bank whose business predominately consists of serving the needs of military personnel who serve or have served in the armed forces (including the U.S. Army, Navy, Marine Corp., Air Force, and Coast Guard) or dependents of military personnel. A bank whose business predominantly consists of serving the needs of military personnel or their dependents means a bank whose most important customer group is military personnel or their dependents.

*Minority depository institution* means a depository institution as defined in 12 U.S.C. 2907(b)(1).

*Monetary donation* means a grant, monetary contribution, or monetary donation.

*Non-branch deposit-taking facility* means a non-branch banking facility

## § 25.03

## 12 CFR Ch. I (1–1–21 Edition)

owned or operated by or operated exclusively for the bank and available to the general public, which is authorized to take deposits and is located in any state or territory of the United States of America.

*Nonmetropolitan area* means any area that is not located in a metropolitan statistical area.

*Other tribal and native lands* means State Designated Tribal Statistical Areas, as defined by the Census Bureau, and Hawaiian Home Lands.

*Partially* means 50 percent or less of the dollar value of the activity or of the individuals or census tracts served by the activity.

*Primarily* means:

(1) Greater than 50 percent of the dollar value of the activity or of the individuals or census tracts served by the activity; or

(2) The express, bona fide intent, purpose, or mandate of the activity as stated, for example in a prospectus, loan proposal, or community action plan.

*Qualifying activity* means an activity that helps to meet the credit needs of a bank's entire community, including low- and moderate-income individuals and communities, in accordance with § 25.04.

*Qualifying loan* means a retail loan that meets the criteria in § 25.04(b) or a community development loan that meets the criteria in § 25.04(c).

*Retail domestic deposit* means a "deposit" as defined in section 3(1) of the FDIA (12 U.S.C. 1813(1)) and held in the United States that is:

(1) Reported on Schedule RC-E of the Call Report, as item 1 or item 3; or

(2) A non-brokered "reciprocal deposit" as defined in 12 U.S.C. 1831(f)(i)(2)(E) for the institution sending the non-brokered "reciprocal deposit" but *retail domestic deposit* does not mean:

(i) A deposit;

(A) Obtained, directly or indirectly, from or through the mediation or assistance of a "deposit broker" as defined in section 29 of the FDIA (12 U.S.C. 1831f(g));

(B) Originated from an affiliated or non-affiliated broker-dealer sweep transaction;

(C) Held in a Health Savings Account established in accordance with 26 U.S.C. 223;

(D) Held in a prepaid card account established in accordance with 12 CFR 1005.1 *et seq.*; or

(ii) A non-brokered reciprocal deposit as defined in 12 U.S.C. 1831(f)(i)(2)(E) for the institution receiving a non-brokered "reciprocal deposit."

*Retail lending product line* means:

(1) The home mortgage loan product line, which includes all home mortgage loans;

(2) The small loan to a business product line, which includes all small loans to businesses;

(3) The small loan to a farm product line, which includes all small loans to farms;

(4) The other revolving credit plan product line, which includes all consumer other revolving credit plans;

(5) An automobile loan product line, which includes all automobile loans; or

(6) The other consumer loan product line, which includes all other consumer loans.

*Retail loan* means a home mortgage loan, small loan to a business, small loan to a farm, or consumer loan.

*Small bank* means a bank that had assets of \$600 million or less in four of the previous five calendar quarters; the dollar figures in this definition shall be adjusted annually and published by the OCC, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest \$100,000.

*Small loan to a business* means a loan reported on the Call Report, Schedule RC-C, Loans and Lease Financing Receivables, Part 1, Item 1.e, Secured by nonfarm nonresidential properties, or Item 4, Commercial and industrial loans, and of no greater than \$1.6 million. The OCC will adjust the \$1.6 million threshold for inflation every five years, and the adjustment to the threshold will be made publicly available.

*Small loan to a farm* means a loan reported on the Call Report, Schedule RC-C, Loans and Lease Financing Receivables, Part 1, Item 1.b, Secured by

farmland, or Item 3, Loans to finance agricultural production and other loans to farmers, and of no greater than \$1.6 million. The OCC will adjust the \$1.6 million threshold for inflation every five years, and the adjustment to the threshold will be made publicly available.

*Underserved area* means a middle-income census tract:

(1) Identified by the OCC as meeting the criteria for population size, density, and dispersion that indicate the area's population is sufficiently small, thin, and distant from a population center that the census tract is likely to have difficulty financing the fixed costs of meeting essential community needs. The OCC will use as the basis for these designations the "urban influence codes," numbered "7," "10," "11," and "12," maintained by the Economic Research Service of the U.S. Department of Agriculture; or

(2) Identified by the OCC as:

(i) Not having a branch of any bank within:

(A) 2 miles from the center of the census tract if it is an urban census tract, as defined by the Federal Financial Institutions Examination Council Census data;

(B) 5 miles from the center of the census tract if it is a mixed census tract, as defined by the Federal Financial Institutions Examination Council Census data;

(C) 10 miles from the center of the census tract if it is a rural census tract, as defined by the Federal Financial Institutions Examination Council Census data; or

(D) 5 miles from the center of the census tract if the census tract is an island area, as defined by the Federal Financial Institutions Examination Council Census data; and

(ii) Not having any branch within the census tract.

*Wholesale bank* means a bank that is not in the business of extending home mortgage, small loans to businesses, small loans to farms, or consumer loans to retail customers, and for which a designation is in effect, in accordance with § 25.15(b).

*Women's depository institution* means a depository institution as defined in 12 U.S.C. 2907(b)(2).

## Subpart B—Qualifying Activities

SOURCE: 85 FR 34792, June 5, 2020, unless otherwise noted.

### § 25.04 Qualifying activities criteria.

(a) *General.* (1) A retail loan, a community development loan, a community development investment, or a community development service that helps to meet the credit needs of a bank's entire community, including low- and moderate-income communities, is a qualifying activity if it meets the criteria in this section at the time the activity is originated, made, or conducted.

(2) Notwithstanding paragraph (a)(1) of this section, a loan or investment that was a qualifying activity and is subsequently sold remains a qualifying activity unless the OCC determined prior to the sale that the activity is no longer a qualifying activity.

(3) Notwithstanding paragraphs (a)(1) and (a)(2) of this section, other than home mortgage loans or consumer loans provided to middle- or upper-income individuals in low- or moderate-income census tracts, an activity that would have received positive consideration in a CRA performance evaluation on the date prior to October 1, 2020 and is on a bank's balance sheet on the effective date of this rule is a qualifying activity.

(b) *Retail loans.* A home mortgage loan, small loan to a business, small loan to a farm, or consumer loan is a qualifying activity if it is:

(1) Provided to a:

(i) Low- or moderate-income individual or family;

(ii) CRA-eligible business; or

(iii) CRA-eligible farm;

(2) Located in Indian country or other tribal and native lands;

(3) A small loan to a business located in a low- or moderate-income census tract; or

(4) A small loan to a farm located in a low- or moderate-income census tract.

(c) *Community development loans, community development investments, and community development services.* A community development loan, community

**§ 25.04**

**12 CFR Ch. I (1–1–21 Edition)**

development investment, or community development service is a qualifying activity if it provides financing for or supports:

(1) Affordable housing, which means:

(i) Rental housing:

(A) That is likely to be partially or primarily inhabited by low- or moderate-income individuals or families as demonstrated by median rents that do not and are not projected at the time of the transaction to exceed 30 percent of 80 percent of the area median income;

(B) That is partially or primarily inhabited by low- or moderate-income individuals or families as demonstrated by an affordable housing set-aside required by a federal, state, local, or tribal government; or

(C) That is undertaken in conjunction with an explicit federal, state, local, or tribal government affordable housing program for low- or moderate-income individuals or families; or

(ii) Owner-occupied housing purchased, refinanced, or improved by or on behalf of low- or moderate-income individuals or families, except for home mortgage loans provided directly to individuals or families;

(2) Another bank's community development loan, community development investment, or community development service;

(3) Community support services which means activities, such as child care, education, workforce development and job training programs, health services, and housing services, that partially or primarily serve or assist low- or moderate-income individuals or families;

(4) Economic development, which means activities that provide financing for or support businesses or farms, including:

(i) Activities that promote job creation or job retention partially or primarily for low- or moderate-income individuals;

(ii) Federal, state, local, or tribal government programs, projects, or initiatives that partially or primarily serve small businesses or small farms as those terms are defined in the programs, projects, or initiatives;

(iii) Retaining existing, or attracting new, businesses, farms, or residents to

low- or moderate-income census tracts, underserved areas, distressed areas, designated disaster areas consistent with a disaster recovery plan, or Indian country or other tribal and native lands;

(iv) A Small Business Administration Certified Development Company, as that term is defined in 13 CFR 120.10, a Small Business Investment Company, as described in 13 CFR part 107, a New Markets Venture Capital company, as described in 13 CFR part 108, a qualified Community Development Entity, as defined in 26 CFR 45D(c), or a U.S. Department of Agriculture Rural Business Investment Company, as defined in 7 CFR 4290.50; or

(v) Technical assistance and supportive services, such as shared space, technology, or administrative assistance for businesses or farms that meet the size eligibility standards of the Small Business Investment Company program, as described in 13 CFR part 107;

(5) Essential community facilities that partially or primarily serve:

(i) Low- or moderate-income individuals or families; or

(ii) Low- or moderate-income census tracts, distressed areas, underserved areas, disaster areas consistent with a disaster recovery plan, or Indian country or other tribal and native lands;

(6) Essential infrastructure that partially or primarily serves:

(i) Low- or moderate-income individuals or families; or

(ii) Low- or moderate-income census tracts, distressed areas, underserved areas, disaster areas consistent with a disaster recovery plan, or Indian country or other tribal and native lands;

(7) A family farm's:

(i) Purchase or lease of farm land, equipment, and other farm-related inputs for the family farm's use in operating the farm;

(ii) Receipt of technical assistance and supportive services for the family farm's own production, such as shared space, technology, or administrative assistance through an intermediary; or

(iii) Sale and trade of family farm products grown or produced by the family farm;

(8) Federal, state, local, or tribal government programs, projects, or initiatives that:

(i) Partially or primarily serve low- or moderate-income individuals or families; or

(ii) Are consistent with a bona fide government revitalization, stabilization, or recovery plan for a low- or moderate-income census tract; a distressed area; an underserved area; a disaster area; or Indian country or other tribal and native lands;

(9) Financial literacy programs or education or homebuyer counseling;

(10) Owner-occupied and rental housing development, construction, rehabilitation, improvement, or maintenance in Indian country or other tribal and native lands;

(11) Qualified opportunity funds, as defined in 26 U.S.C. 1400Z-2(d)(1), that benefit low- or moderate-income qualified opportunity zones, as defined in 26 U.S.C. 1400Z-1(a); or

(12) Other activities and ventures undertaken, including capital investments and loan participations, by a bank in cooperation with a minority depository institution, women's depository institution, Community Development Financial Institution, or low-income credit union, if the activity helps to meet the credit needs of local communities in which these institutions are chartered, including activities that indirectly help to meet community credit needs by promoting the sustainability and profitability of those institutions and credit unions.

**§ 25.05 Qualifying activities confirmation and illustrative list.**

(a) *Qualifying activities list.* The OCC maintains a publicly available illustrative list at [www.occ.gov](http://www.occ.gov) of non-exhaustive examples of qualifying activities that meet, and may include activities that do not meet, the criteria in § 25.04.

(b) *Confirmation of a qualifying activity.* An interested party may request that the OCC confirm that an activity meets the criteria in § 25.04 and is a qualifying activity in accordance with paragraph (c) of this section.

(1) When the OCC confirms that an activity is consistent with the criteria in § 25.04, the OCC will notify the re-

questor, publish its decision, and may add the activity to the list of activities that meet the qualifying activities criteria described in paragraph (a) of this section, incorporating any conditions imposed, if applicable.

(2) When the OCC determines that an activity is not consistent with the criteria in § 25.04, the OCC will notify the requestor, publish its decision, and may add this activity to the list of activities that do not meet the qualifying activities criteria described in § 25.04.

(c) *Process.* (1) An interested party may request that the OCC confirm that an activity is a qualifying activity by submitting a complete Qualifying Activity Confirmation Request Form available on [www.occ.gov](http://www.occ.gov).

(2) In responding to a confirmation request that an activity is consistent with the criteria in § 25.04, the OCC will consider:

(i) The information on the Qualifying Activity Confirmation Request Form;

(ii) Whether the activity is consistent with the safe and sound operation of the bank; and

(iii) Any other information the OCC deems relevant.

(3) The OCC may impose conditions on its confirmation to ensure that an activity is consistent with the criteria in § 25.04.

(4) Unless notified by the OCC that it is extending the confirmation period to 90 days, an activity is confirmed as a qualifying activity if the requestor is not informed of an OCC objection within 60 days of submission of a complete Qualifying Activity Confirmation Request Form.

(d) *Modifying the qualifying activities list.* In addition to updating the list in paragraph (a) of this section on a periodic basis in response to requests for confirmation described in paragraph (b) of this section, the OCC will publish the qualifying activities list no less frequently than every five years for notice and comment to determine whether the list should change. If the OCC determines that a qualifying loan or community development investment no longer meets the criteria in § 25.04, that loan or community development investment will not be considered a qualifying activity for any subsequent purchasers.

## § 25.06

## 12 CFR Ch. I (1–1–21 Edition)

### § 25.06 CRA desert confirmation.

(a) *CRA desert list.* The OCC maintains a publicly available illustrative list at *www.occ.gov* of areas that were consistent with the definition in § 25.03 at the time a bank requested confirmation of a CRA desert.

(b) *Confirmation of a CRA desert.* A bank must request that the OCC confirm that an area is a CRA desert in accordance with paragraph (c) of this section before receiving the CRA desert multiplier in § 25.08(b) in an evaluation period, even if that area is on the CRA desert list in paragraph (a) of this section.

(1) When the OCC confirms that an area is consistent with the definition of CRA desert in § 25.03, the OCC will notify the requestor and may add this area to the list of CRA deserts as described in paragraph (a) of this section.

(2) When the OCC determines that an area is not consistent with the definition of CRA desert in § 25.03, the OCC will notify the requestor.

(c) *Process.* (1) A bank may request that the OCC confirm that an area is a CRA desert by submitting a request to the OCC detailing why the area is consistent with the definition of CRA desert in § 25.03.

(2) In responding to a confirmation request that an activity is consistent with the definition of CRA desert in § 25.03, the OCC will consider:

(i) The information provided by the bank; and

(ii) Any other information the OCC deems relevant.

### § 25.07 Qualifying activities quantification.

(a) *Community development service quantification.* The quantified dollar value of a community development service is the compensation *multiplied by* the total number of hours one or more of the employees spent performing the service, as adjusted by paragraph (e) of this section.

(b) *In-kind donation quantification.* The quantified dollar value of an in-kind donation is the fair market value of the donation, as adjusted by paragraph (e) of this section.

(c) *Monetary donation quantification.* The quantified dollar value of a monetary donation is the actual dollar value

of the donation, as adjusted by paragraph (e) of this section.

(d) *Qualifying loan and other community development investment quantification.* The quantified dollar value of a qualifying loan or a community development investment not included in paragraph (b) or (c) of this section, is:

(1) Except for qualifying loans in paragraph (d)(2), the average of the dollar value, as of the close of business on the last day of the month, of:

(i) The outstanding balance of a loan or investment, as adjusted by paragraph (e) of this section;

(ii) Any legally binding commitment to invest, to the extent not reflected in paragraph (d)(1)(i) of this section and as adjusted by paragraph (e) of this section; and

(iii) Any commitment to lend, to the extent not reflected in paragraph (d)(1)(ii) of this section and as adjusted in paragraph (e) of this section; or

(2) For qualifying retail loans sold within 365 days of origination, the dollar value of the loan at origination.

(3) For community development investment funds that are syndicated or sponsored by the bank for the purpose of obtaining financing from other investors and support one or more projects that are eligible for low-income housing tax credits or new markets tax credits:

(i) The total dollar value of the fund in the year of origination; and

(ii) One half of the total dollar value of the portion of the fund that is sold in the year that it is sold.

(e) *Portion of partially qualifying activities.* The quantified dollar value of a partially qualifying activity is calculated by *multiplying* the percentage of the activity that is qualifying by the full dollar value of the qualifying activity quantified under paragraphs (a)—(d) of this section.

### § 25.08 Qualifying activities value.

(a) *Bank's qualifying activities value.* A bank evaluated under § 25.13 calculates its qualifying activities value annually based on the quantified dollar value of all qualifying activities originated, made, performed, or on the bank's balance sheet during the year. The qualifying activities value equals the *sum*, during a given annual period, of:

## Comptroller of the Currency, Treasury

## § 25.09

(1) The quantified dollar value of qualifying loans and community development investments originated, made, or performed by the bank during the year or on the bank's balance sheet during the year, as adjusted in paragraph (b) of this section; and

(2) The aggregate:

(i) Quantified dollar value of community development services conducted during the year, as adjusted in paragraph (b) of this section;

(ii) Quantified dollar value of in-kind donations made during the year, as adjusted in paragraph (b) of this section; and

(iii) Quantified dollar value of monetary donations made during the year, as adjusted in paragraph (b) of this section.

(b) *Multipliers.* (1) To be eligible for the multipliers in paragraphs (b)(2) and (b)(3) of this section, the quantified dollar value of a bank's current evaluation period community development loans, community development investments, and community development services must be approximately equal to the quantified dollar value of these activities considered in the bank's prior evaluation period. The quantified dollar value of qualifying activities originated, made, conducted or purchased by a bank during the evaluation period after this requirement is met will be adjusted using the multipliers in paragraphs (b)(2)–(b)(3) of this section, as applicable.

(2) When calculating the bank's qualifying activity value or an assessment area qualifying activities value, the quantified dollar value of the following qualifying activities, except for activities quantified under § 25.07(d)(3), will be adjusted by *multiplying* the quantified dollar value by 2.

(i) Activities provided to or that support minority depository institutions, women's depository institutions, Community Development Financial Institutions, and low-income credit unions, except activities related to mortgage-backed securities;

(ii) Other community development investments, except community development investments in mortgage-backed securities and municipal bonds;

(iii) Other community development services;

(iv) Other affordable housing-related community development loans; and

(v) Retail loans generated by branches in low- and moderate-income census tracts.

(3) In addition to any multiplier under paragraph (b)(2) of this section, when calculating the bank's qualifying activities value or an assessment area qualifying activities value, the quantified dollar value of the qualifying activities in CRA deserts, except for activities quantified under § 25.07(d)(3), will be adjusted by multiplying the quantified dollar value by 2.

(4) Qualifying activities that receive a multiplier under paragraphs (b)(2) and (b)(3) of this section may be eligible for a multiplier of up to 4 times their quantified dollar value based on the OCC's determination of the activity's responsiveness, innovativeness, or complexity.

(c) *Assessment area qualifying activities value.* A bank evaluated under § 25.13 calculates its assessment area qualifying activities value for each assessment area by using the process described in paragraph (a) of this section for qualifying activities located in the assessment area and originated, made, or performed by the bank during the year or were on the bank's balance sheet during the year.

### Subpart C—Assessment Area

SOURCE: 85 FR 34792, June 5, 2020, unless otherwise noted.

#### § 25.09 Assessment area.

(a) *General.* A bank must delineate one or more assessment areas within which the OCC evaluates the bank's record of helping to meet the credit needs of its community. The OCC reviews the delineation for compliance with the requirements of this section. Unless pursuant to an approved application covered under § 25.02(a)(3) for a merger or consolidation with an insured depository institution, an assessment area delineation can only change once a year and must not change within the annual period used to determine an assessment area CRA evaluation measure under § 25.11(c).

(b) *Facility-based assessment area(s).*

(1) A bank must delineate an assessment area encompassing each location where the bank maintains a main office, a branch, or a non-branch deposit-taking facility that is not an ATM as well as the surrounding locations in which the bank has originated or purchased a substantial portion of its qualifying retail loans. Assessment areas delineated under this paragraph may contain one or more of these facilities and may also contain one or more deposit-taking ATMs.

(2) A bank may delineate an assessment area encompassing locations where it maintains a deposit-taking ATM as well as the surrounding locations in which the bank has originated or purchased a substantial portion of its qualifying retail loans. Assessment areas delineated under this paragraph may contain one or more of these facilities and may also contain one or more of the facilities in paragraph (b)(1) of this section.

(3) A facility-based assessment area must be delineated to consist of:

(i) One whole metropolitan statistical area (using the metropolitan statistical area boundaries that were in effect as of January 1 of the calendar year in which the delineation is made);

(ii) The whole nonmetropolitan area of a state;

(iii) One or more whole, contiguous metropolitan divisions in a single metropolitan statistical area (using the metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made); or

(iv) One or more whole, contiguous counties or county equivalents in a single metropolitan statistical area or nonmetropolitan area.

(4) A bank may delineate its facility-based assessment area(s) in the smallest geographic area where it maintains a main office, branch, or non-branch deposit-taking facility or may delineate a larger assessment area that includes these locations, as provided in paragraph (b)(3) of this section.

(5) A facility-based assessment area may not extend beyond a metropolitan statistical area or state boundary unless the assessment area is located in a multistate metropolitan statistical

area. If a bank serves a geographic area that extends beyond a state boundary, the bank must delineate separate assessment areas for the areas in each state. If a bank serves a geographic area that extends beyond a metropolitan statistical area boundary, the bank must delineate separate assessment areas for the areas inside and outside the metropolitan statistical area.

(c) *Deposit-based assessment area(s).* (1)

A bank that receives 50 percent or more of its retail domestic deposits from geographic areas outside of its facility-based assessment areas must delineate separate, non-overlapping assessment areas where it receives 5 percent or more of its retail domestic deposits.

(2) A deposit-based assessment area must be delineated to consist of:

(i) One whole state;

(ii) One whole metropolitan statistical area (using the metropolitan statistical area boundaries that were in effect as of January 1 of the calendar year in which the delineation is made);

(iii) The whole nonmetropolitan area of a state;

(iv) One or more whole, contiguous metropolitan divisions in a single metropolitan statistical area (using the metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made);

(v) The remaining geographic area of a state, metropolitan statistical area, nonmetropolitan area, or metropolitan division other than where it has a facility-based assessment area; or

(vi) One or more whole, contiguous counties or county equivalents in a single metropolitan statistical area or nonmetropolitan area.

(3) A bank may delineate its deposit-based assessment area(s) in the smallest geographic area where it receives 5 percent or more of its retail domestic deposits or may delineate a larger assessment area that includes these geographic areas, as provided in paragraph (b)(2) of this section.

(d) *Limitations on delineation of assessment areas.* A bank's assessment areas must not:

(1) Reflect illegal discrimination; or

(2) Arbitrarily exclude low- or moderate-income census tracts, taking into

account the bank's size and financial condition.

(e) *Military banks.* Notwithstanding the requirements of this section, a military bank's assessment area will consist of the entire United States of America and its territories. A military bank will only be evaluated under § 25.13(c).

(f) *Banks evaluated under strategic plans.* A bank evaluated under a strategic plan will delineate its assessment area(s) in accordance with the requirements of § 25.18(g)(2).

(g) *Use of assessment area(s).* The OCC uses the assessment area(s) delineated by a bank in its evaluation of the bank's CRA performance unless the OCC determines that the assessment area(s) do not comply with the requirements of this section.

### Subpart D—Performance Evaluations

SOURCE: 85 FR 34792, June 5, 2020, unless otherwise noted.

#### § 25.10 Performance standards and ratings, in general.

(a) *Performance standards.* The OCC assesses the CRA performance of a bank in an examination as follows:

(1) *General performance standards.* (i) The OCC assesses the CRA performance of a bank other than banks described in paragraphs (a)(2), (a)(3), and (a)(4) of this section based on the bank's application of the general performance standards and determination of its presumptive ratings under § 25.13.

(ii) The OCC determines the assigned ratings for a bank evaluated under § 25.13 as provided in § 25.19.

(iii) The OCC determines the state or multistate metropolitan statistical area ratings for a bank evaluated under § 25.13 as provided in § 25.20.

(2) *Small bank and intermediate bank performance standards.* (i) The OCC applies the small bank and intermediate bank performance standards, as provided in § 25.14, in evaluating the performance of a small bank or intermediate bank, unless the bank is evaluated under an approved strategic plan as described under paragraph (a)(4) of this section or elects to opt in to the

general performance standards under paragraph (b) of this section.

(ii) The OCC assigns a small bank evaluated under the small bank and intermediate bank performance standards in § 25.14 lending test and bank ratings as provided for in appendix A of this part.

(iii) The OCC assigns an intermediate bank evaluated under the small bank and intermediate bank performance standards in § 25.14 lending test, community development test, and bank ratings as provided in appendix A of this part.

(3) *Wholesale and limited purpose bank performance standards.* (i) The OCC applies the wholesale and limited purpose bank performance standards, as provided in § 25.15, in evaluating the performance of a wholesale or limited purpose bank, unless the bank is evaluated under an approved strategic plan as described under paragraph (a)(4) of this section or elects to opt in to the general performance standards under paragraph (b) of this section.

(ii) The OCC assigns a wholesale or limited purpose bank evaluated under the wholesale and limited purpose bank performance standards in § 25.15 community development test and bank ratings as provided for in appendix A of this part.

(4) *Strategic plan.* The OCC evaluates the performance of a bank under a strategic plan if the bank submits, and the OCC approves, a strategic plan as provided in § 25.18.

(b) *General performance standards opt in.* A small, intermediate, wholesale, or limited purpose bank may elect to opt in to be evaluated under the general performance standards described in paragraph (a)(1) of this section. A small, intermediate, wholesale, or limited purpose bank that elects to be evaluated under the general performance standards must collect, maintain, and report the data required for other banks under §§ 25.21, 25.25, and 25.26. Once a small, intermediate, wholesale, or limited purpose bank elects to opt in, it must complete at least one evaluation period under the general performance standards and may elect no more than once to opt out of the general performance standards. A small, intermediate, wholesale, or limited

## § 25.11

purpose bank that opts out from the general performance standards will revert to being evaluated according to the corresponding performance standards described in paragraphs (a)(2) and (a)(3) of this section, unless the bank is evaluated under an approved strategic plan as described under (a)(4) of this section.

(c) *Safe and sound operations.* This part and the CRA do not require a bank to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the OCC anticipates that banks can meet the standards of this part with safe and sound loans, investments, and services on which the banks expect to make a profit. Banks are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income census tracts or individuals, only if consistent with safe and sound operations.

### § 25.11 CRA evaluation measure.

(a) *CRA evaluation measure.* A bank evaluated as described in § 25.13 will determine its bank and assessment area CRA evaluation measures annually as part of its CRA performance evaluation.

(b) *Determination of the bank's CRA evaluation measure.* A bank's CRA evaluation measure is the *sum of*:

(1) The bank's annual qualifying activities values calculated under § 25.08(a) *divided by* the average quarterly value of the bank's retail domestic deposits as of the close of business on the last day of each quarter for the same period used to calculate the annual qualifying activities value; and

(2) The number of the bank's branches located in or that serve low- or moderate-income census tracts, distressed areas, underserved areas, and Indian country or other tribal and native lands *divided by* its total number of branches as of the close of business on the last day of the same period used to calculate the annual qualifying activities value *multiplied by* .02.

(3) If the value calculated in paragraph (b)(2) of this section exceeds .01, then the bank's CRA evaluation measure is the *sum of* the value calculated

## 12 CFR Ch. I (1-1-21 Edition)

in paragraph (b)(1) of this section and .01.

(c) *Determination of the assessment area CRA evaluation measure.* A bank's assessment area CRA evaluation measure is determined in each assessment area and is the *sum of*:

(1) The bank's annual assessment area qualifying activities value calculated under § 25.08(c); *divided by* the average quarterly value of the bank's assessment area retail domestic deposits as of the close of business on the last day of each quarter for the same period used to calculate the annual assessment area qualifying activities value; and

(2) The number of the bank's branches located in or that serve low- or moderate-income census tracts, distressed areas, underserved areas, and Indian country or other tribal and native lands in the assessment area *divided by* its total number of branches in the assessment area as of the close of business on the last day of the same period used to calculate the annual assessment area qualifying activities value *multiplied by* .02.

(3) If the value calculated in paragraph (c)(2) of this section exceeds .01, then the bank's assessment area CRA evaluation measure is the *sum of* the value calculated in paragraph (c)(1) of this section and .01.

(d) *Average annual CRA evaluation measures.* For each evaluation period, a bank will calculate the average of its:

(1) Annual CRA evaluation measures for each year in the evaluation period; and

(2) Annual assessment area CRA evaluation measures for each year in the evaluation period, separately for each assessment area.

### § 25.12 Retail lending distribution tests.

(a) *General.* In each assessment area, for a bank evaluated as described in § 25.13 the OCC will apply a:

(1) Geographic distribution test for its home mortgage product line, small loan to a business product line, or small loan to a farm product line if those product lines are major retail lending product lines with 20 or more originations per year in the assessment area during the evaluation period; and

(2) Borrower distribution test for each major retail lending product line with 20 or more originations per year in the assessment area during the evaluation period.

(b) *Geographic distribution test*—(1) *Home mortgage product line.* The OCC determines whether a bank passes the geographic distribution test for the home mortgage product line by comparing the bank's home mortgage loans originated in low- and moderate-income tracts in the assessment area as a percentage of the bank's home mortgage loans originated in the assessment area to either the associated geographic demographic comparator or the associated geographic peer comparator.

(i) *Geographic demographic comparator.* The geographic demographic comparator is the percentage of owner-occupied housing units in the assessment area that are in low- and moderate-income census tracts.

(ii) *Geographic peer comparator.* The geographic peer comparator is all peer home mortgage loans originated in low- and moderate-income areas in the assessment area as a percentage of all peer home mortgage loans in the assessment area, where peers are all banks evaluated under the general performance standards in § 25.13.

(2) *Small loan to a business product line.* The OCC determines whether a bank passes the geographic distribution test for the small loan to a business product line by comparing the bank's small loans to businesses originated in low- or moderate-income census tracts in the assessment area as a percentage of the bank's small loans to businesses originated in the assessment area to either the associated geographic demographic comparator or the associated geographic peer comparator.

(i) *Geographic demographic comparator.* The geographic demographic comparator is the percentage of businesses in the assessment area that are in low- and moderate-income census tracts.

(ii) *Geographic peer comparator.* The geographic peer comparator is all peer small loans to businesses originated in low- and moderate-income census tracts in the assessment area as a percentage of all peer small loans to businesses originated in the assessment

area, where peers are all banks evaluated under the general performance standards in § 25.13.

(3) *Small loan to a farm product line.* The OCC determines whether a bank passes the geographic distribution test for the small loan to a farm product line by comparing the bank's small loans to farms originated in low- or moderate-income census tracts in the assessment area as a percentage of the bank's small loans to farms originated in the assessment area to the associated geographic demographic comparator or the associated geographic peer comparator.

(i) *Geographic demographic comparator.* The geographic demographic comparator is the percentage of farms in the assessment area that are in low- and moderate-income census tracts.

(ii) *Geographic peer comparator.* The geographic peer comparator is all peer small loans to farms originated in low- and moderate-income census tracts in the assessment area as a percentage of all peer small loans to farms originated in the assessment area, where peers are all banks evaluated under the general performance standards in § 25.13.

(c) *Borrower distribution test*—(1) *Home mortgage lending product line.* The OCC determines whether a bank passes the borrower distribution test for a home mortgage lending product line by comparing the bank's home mortgage loans originated to low- and moderate-income families in the assessment area as a percentage of the bank's home mortgage loans originated in the assessment area to either the associated borrower demographic comparator or the associated borrower peer comparator.

(i) *Borrower demographic comparator.* The borrower demographic comparator is the percentage of low- and moderate-income families in the assessment area.

(ii) *Borrower peer comparator.* The borrower peer comparator is all peer home mortgage loans originated to low- or moderate-income families in the assessment area as a percentage of all peer home mortgage loans originated in the assessment area, where peers are all banks evaluated under the general performance standards in § 25.13.

## § 25.13

## 12 CFR Ch. I (1–1–21 Edition)

(2) *Automobile lending product line, other revolving credit plan product line, or other consumer loan product line.* The OCC determines whether a bank passes the borrower distribution test for the automobile lending product line, other revolving credit plan product line, or other consumer loan product line by comparing the bank's product line loans to low- and moderate-income households in the assessment area as a percentage of the bank's product line loans originated in the assessment area to either the associated demographic borrower comparator or the associated peer comparator.

(i) *Borrower demographic comparator.* The borrower demographic comparator is the percentage of low- and moderate-income households in the assessment area.

(ii) *Borrower peer comparator.* The borrower peer comparator is all peer product line loans originated to low- or moderate-income households as a percentage of all peer product line loans originated in the assessment area, where peers are all banks evaluated under the general performance standards in § 25.13.

(3) *Small loan to a business product line.* The OCC determines whether a bank passes the borrower distribution test for the small loan to a business product line by comparing the bank's small loans to businesses originated to CRA-eligible businesses in the assessment area as a percentage of the bank's small loans to businesses originated in the assessment area to either the associated demographic borrower comparator or the associated peer comparator.

(i) *Borrower demographic comparator.* The borrower demographic comparator is the percentage of CRA-eligible businesses in the assessment area.

(ii) *Borrower peer comparator.* The borrower peer comparator is all peer small loans to businesses to CRA-eligible businesses originated in the assessment area as a percentage of all small loans to businesses originated in the assessment area, where peers are all banks evaluated under the general performance standards in § 25.13.

(4) *Small loan to a farm product line.* The OCC determines whether a bank passes the borrower distribution test

for the small loan to a farm product line by comparing the bank's small loans to farms originated to CRA-eligible farms in the assessment area as a percentage of the bank's small loans to farms originated in the assessment area to either the associated demographic borrower comparator or the associated peer comparator.

(i) *Borrower demographic comparator.* The borrower demographic comparator is the percentage of CRA-eligible farms in the assessment area.

(ii) *Borrower peer comparator.* The borrower peer comparator is all peer small loans to farms to CRA-eligible farms originated in the assessment area as a percentage of all peer small loans to farms, where peers are all banks that are evaluated under the general performance standards in § 25.13.

### § 25.13 General performance standards and presumptive rating.

(a) *General.* The bank's presumptive rating and its assessment area presumptive rating(s) for banks assessed under this section are determined by evaluating whether a bank has met all the performance standards associated with a given rating category. A bank will use the performance standards in effect on the first day of its evaluation period for the duration of its evaluation period, unless the bank elects to use performance standards published later during the evaluation period. If the bank elects to use a later-published performance standard, that performance standard will apply during the entire evaluation period.

(b) *Performance standards adjustments.* The OCC will periodically adjust the performance standards.

(1) *Factors considered.* When adjusting the performance standards, the OCC will consider factors such as the level of qualifying activities conducted by all banks, market conditions, and unmet needs and opportunities.

(2) *Public notice and comment.* The OCC will provide for a public notice and comment period on any proposed adjustments to the performance standards prior to finalizing the adjustments.

(c) *Bank performance standards—(1) Outstanding.* The outstanding performance standards are:

(i) *CRA evaluation measure.* The bank's average annual CRA evaluation measure during the evaluation period is outstanding;

(ii) *Assessment area ratings.* (A) Except as provided in paragraph (c)(1)(ii)(B) of this section, the bank received an assigned rating of outstanding in—

(1) 80 percent of its assessment areas; and

(2) Assessment areas from which it receives 80 percent of its retail domestic deposits that it receives from its assessment areas; and

(B) For a bank with five or fewer assessment areas, the bank received an assigned rating of outstanding in

(1) 50 percent of its assessment areas; and

(2) Assessment areas from which it receives 80 percent of its retail domestic deposits that it receives from its assessment areas.

(iii) *Community development minimum.* The total quantified dollar value of community development loans and community development investments conducted during the evaluation period, including any applicable multipliers from § 25.08(b), *divided by* the average quarterly value of the bank's total retail domestic deposits as of the close of business on the last day of each quarter of the evaluation period is outstanding.

(2) *Satisfactory.* The satisfactory performance standards are:

(i) *CRA evaluation measure.* The bank's average annual CRA evaluation measure during the evaluation period is satisfactory.

(ii) *Assessment area ratings.* (A) Except as provided in paragraph (c)(2)(ii)(B) of this section, the bank received an assigned rating of at least satisfactory in

(1) 80 percent of its assessment areas; and

(2) Assessment areas from which the bank receives at least 80 percent of its retail domestic deposits that it receives from its assessment areas; and

(B) For a bank with five or fewer assessment areas the bank received an assigned rating of at least satisfactory in

(1) 50 percent of its assessment areas; and

(2) Assessment areas from which the bank receives 80 percent of its retail

domestic deposits that it receives from its assessment areas.

(iii) *Community development minimum.* The total quantified dollar value of community development loans and community development investments conducted during the evaluation period, including any applicable multipliers from § 25.08(b), *divided by* the average quarterly value of the bank's total retail domestic deposits as of the close of business on the last day of each quarter of the evaluation period is satisfactory.

(3) *Needs to improve.* The needs to improve performance standard is an average annual CRA evaluation measure during the evaluation period that needs to improve.

(4) *Substantial noncompliance.* The substantial noncompliance standard is an average annual CRA evaluation measure during the evaluation period that is substantially noncompliant.

(d) *Assessment area performance standards*—(1) *Outstanding.* The assessment area outstanding performance standards are:

(i) *Retail lending distribution tests.* The bank must pass both the geographic and borrower distribution tests for the major retail lending product lines evaluated in § 25.12;

(ii) *CRA evaluation measure.* The bank's average annual assessment area CRA evaluation measures during the evaluation period is outstanding; and

(iii) *Community development minimum.* The quantified dollar value of community development loans and community development investments conducted in the assessment area during the evaluation period, including any applicable multipliers from § 25.08(b), *divided by* the average quarterly value of the bank's retail domestic deposits received from the assessment area as of the close of business on the last day of each quarter of the evaluation period is outstanding.

(2) *Satisfactory.* The assessment area satisfactory performance standards are:

(i) *Retail lending distribution tests.* The bank must pass both the geographic and borrower distribution tests for the major retail lending product lines evaluated in § 25.12;

## § 25.14

## 12 CFR Ch. I (1–1–21 Edition)

(ii) *CRA evaluation measure.* The bank's average assessment area CRA evaluation measure during the evaluation period is satisfactory; and

(iii) *Community development minimum.* The quantified dollar value of community development loans and community development investments conducted in the assessment area during the evaluation period, including any applicable multipliers from § 25.08(b), divided by the average quarterly value of the bank's retail domestic deposits received from the assessment area as of the close of business on the last day of each quarter of the evaluation period is satisfactory.

(3) *Needs to improve.* The assessment area needs to improve performance standard is an average assessment area CRA evaluation measure during the evaluation period that needs to improve.

(4) *Substantial noncompliance.* The assessment area substantial noncompliance performance standard is an average assessment area CRA evaluation measure during the evaluation period that is substantially noncompliant.

### § 25.14 Small and intermediate bank performance standards.

(a) *Performance criteria—(1) Small banks.* The OCC evaluates the record of a small bank of helping to meet the credit needs of its assessment area(s) pursuant to the criteria in paragraph (b) of this section.

(2) *Intermediate banks.* The OCC evaluates the record of an intermediate bank of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (b) and (c) of this section.

(b) *Lending test.* A small bank's or intermediate bank's lending performance is evaluated pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other retail and community development lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or community development investments;

(2) The percentage of loans and, as appropriate, other retail and community development lending-related ac-

tivities located in the bank's assessment area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other retail and community development lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans; and

(5) The bank's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(c) *Community development test.* An intermediate bank's community development performance also is evaluated pursuant to the following criteria:

(1) The number and amount of community development loans;

(2) The number and amount of community development investments;

(3) The extent to which the bank provides community development services; and

(4) The bank's responsiveness through such activities to community development lending, community development investment, and community development service needs.

(d) *Small bank and intermediate bank performance ratings.* The OCC rates the performance of a small bank or intermediate bank evaluated under this section as provided in appendix A of this part.

### § 25.15 Wholesale and limited purpose bank performance standards.

(a) *Scope.* The OCC assesses a wholesale or limited purpose bank's record of helping to meet the credit needs of its assessment area(s) through its community development lending, community development investments, or community development services.

(b) *Designation as a wholesale or limited purpose bank.* In order to receive a designation as a wholesale or limited purpose bank, a bank shall file a written request with the OCC, at least three months prior to the proposed effective date of the designation. If the OCC approves the designation, it remains in effect until the bank requests revocation of the designation or until one year after the OCC notifies the

bank that the OCC has revoked the designation on its own initiative.

(c) *Performance criteria.* The OCC evaluates the community development performance of a wholesale or limited purpose bank pursuant to the following criteria:

(1) The number and amount of community development loans (including originations and purchases of loans and other community development loan data provided by the bank, such as data on loans outstanding, commitments, and letters of credit), community development investments, or community development services;

(2) The use of innovative or complex community development investments, community development loans, or community development services and the extent to which the investments are not routinely provided by private investors; and

(3) The bank's responsiveness to credit and community development needs.

(d) *Benefits to assessment area(s)*—(1) *Benefits inside assessment area(s).* The OCC considers all community development investments, community development loans, and community development services that benefit areas within the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(2) *Benefits outside assessment area(s).* The OCC considers the community development investments, community development loans, and community development services that benefit areas outside the bank's assessment area(s), if the bank has adequately addressed the needs of its assessment area(s).

(e) *Community development performance rating.* The OCC rates a bank's community development performance as provided in appendix A of this part.

#### § 25.16 Consideration of performance context.

(a) *General.* Performance context is used to assess how the factors in paragraph (b) of this section affect a bank's capacity and opportunity to meet the performance standards described in § 25.13, § 25.14, § 25.15 or § 25.18. Based on that assessment, the OCC may adjust:

(1) The assessment area and bank presumptive ratings in § 25.13; or

(2) The small, intermediate, wholesale, and limited purpose bank ratings, as described in appendix A.

(b) *Performance context factors.* In assessing performance context, the OCC considers and documents the effect of the following factors when determining the assigned rating:

(1) The bank's explanation of how its capacity to meet the performance standards described in §§ 25.13, 25.14, 25.15 or 25.18 was affected by:

(i) The bank's product offerings and business strategy;

(ii) The bank's unique constraints, such as its financial condition, safety and soundness limitations, or other factors;

(iii) The innovativeness, complexity, and flexibility of the bank's qualifying activities;

(iv) The bank's development of business infrastructure and staffing to support the purpose of this part; and

(v) The responsiveness of the bank's qualifying activities to the needs of the community;

(2) The bank's explanation of how its opportunity to engage in qualifying activities was affected by:

(i) The demand for qualifying activities, including, for example, credit needs and market opportunities identified in a Federal Home Loan Bank Targeted Community Lending Plan as provided for in 12 CFR 1290.6(a)(5) or a U.S. Department of Housing & Urban Development Consolidated Plan as provided for in 24 CFR part 91, as applicable;

(ii) The demand for retail loans in low- or moderate-income census tracts; and

(iii) Demographic factors (e.g., housing costs, unemployment rates variation);

(3) The bank's competitive environment, as demonstrated by peer performance.

(4) Any written comments about assessment area needs and opportunities submitted to the bank or the OCC; and

(5) Any other information deemed relevant by the OCC.

(c) *Form.* Banks, other than small and intermediate banks, must submit the information in paragraph (b) of this section on the performance context form available on [www.occ.gov](http://www.occ.gov), including for each assessment area.

## § 25.17

## 12 CFR Ch. I (1–1–21 Edition)

### § 25.17 Discriminatory and other illegal credit practices.

(a) *Evidence of discriminatory or other illegal credit practices.* A bank's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices. In assessing a bank's CRA performance, the OCC's evaluation will consider evidence of discriminatory or other illegal credit practices including but not limited to:

- (1) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;
- (2) Violations of the Home Ownership and Equity Protection Act;
- (3) Violations of section 5 of the Federal Trade Commission Act;
- (4) Violations of section 8 of the Real Estate Settlement Procedures Act;
- (5) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission;
- (6) Violations of the Military Lending Act; and
- (7) Violations of the Servicemembers Civil Relief Act.

(b) *Effect of evidence of discriminatory or other illegal credit practices.* In determining the effect of evidence of practices described in paragraph (a) of this section on the bank's assigned rating, the OCC considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank has in place to prevent the practices; any corrective action that the bank has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

### § 25.18 Strategic plan.

(a) *General.* The OCC assesses a bank's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

- (1) The bank has submitted the plan to the OCC as provided for in this section;
- (2) The OCC has approved the plan;
- (3) The plan is in effect; and
- (4) The bank has been operating under an approved plan for at least one year.

(b) *Plan submission*—(1) *Required submission.* A bank must submit a stra-

tegic plan that meets the requirements of this section if the bank would otherwise be evaluated under § 25.13 and does not maintain retail domestic deposits on-balance sheet; or

(2) *Optional submission.* A bank not covered under paragraph (b)(1) of this section may submit a strategic plan to the OCC for approval.

(c) *Data reporting.* The OCC's approval of a plan does not affect the bank's data collection, recordkeeping, and reporting obligations, if any, in §§ 25.21, 25.22, 25.25, and 25.26, unless otherwise determined in writing by the OCC. The OCC may require additional bank-specific data collection, recordkeeping, and reporting under a strategic plan, as appropriate.

(d) *Plans in general*—(1) *Term.* A plan may have a term of no more than five years, and any multi-year plan must include annual interim measurable goals under which the OCC evaluates the bank's performance.

(2) *Multiple assessment areas.* A bank with more than one assessment area may prepare a single plan for all of its assessment areas or separate plans for one or more of its assessment areas.

(e) *Public participation in plan development.* Before submitting a plan to the OCC for approval, a bank must:

(1) Solicit public comment on the plan for at least 30 days by submitting the plan for publication on the OCC's website and by publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan; and

(2) During the public comment period, make copies of the plan available for review by the public and provide copies of the plan upon request for a reasonable fee to cover copying, printing, or mailing, if applicable.

(f) *Submission of plan.* The bank must submit its complete plan to the OCC at least six months prior to the proposed effective date of the plan. The bank must also submit with its plan a description of any written public comments received, including how the plan was revised in light of the comments received. If the OCC determines the plan is not complete, the OCC will notify the bank specifying the information needed, designating a reasonable period of time for the bank to provide

the information, and informing the bank that failure to provide the information requested will result in no further consideration being given to the plan.

(g) *Plan content*—(1) *Performance standards.* (i) A plan must specify measurable goals for helping to meet the credit needs of the bank's community and in each of its assessment areas, particularly the needs of low- and moderate-income census tracts and low- and moderate-income individuals and families, through qualifying activities.

(ii) A plan must address the types and volume of qualifying activities the bank will conduct. A plan may focus on one or more types of qualifying activities considering the bank's capacity and constraints, product offerings, and business strategy.

(2) *Assessment area delineation.* A plan must include a delineation of the bank's assessment areas(s) that meets the requirements of § 25.09(a) through (d). In addition, the plan may include assessment area delineations that reflect its target geographic market as defined by the bank in its strategic plan. For a de novo bank, the assessment area delineations should include the projected location of its deposit-taking facilities, retail domestic deposit base, and lending activities.

(3) *Confidential information.* A bank may submit additional information to the OCC on a confidential basis, to the extent permitted by law, but the goals stated in the plan must be sufficiently specific to enable the public and the OCC to judge the merits of the plan.

(4) *Satisfactory and outstanding performance standards.* A plan must specify measurable goals that constitute satisfactory performance. A plan may specify measurable goals that constitute outstanding performance. If a bank submits, and the OCC approves, both satisfactory and outstanding performance goals, the OCC considers the bank eligible for an outstanding performance rating.

(h) *Plan approval*—(1) *Timing.* The OCC will act upon a plan within 90 days after the OCC receives the complete plan and other material required under paragraph (g) of this section. If the OCC does not act within this time period, the plan will be deemed approved

unless the OCC extends the review period for good cause for no more than 30 days.

(2) *Public participation.* In evaluating the plan's goals, the OCC considers any written public comment on the plan and any response by the bank to any written public comment on the plan.

(3) *Criteria for evaluating a plan.* The OCC evaluates a plan's goals by considering the extent and breadth of the qualifying activities including:

(i) Community development loans, community development investments, and community development services; and

(ii) The use of innovative, flexible, or complex qualifying activities.

(i) *Plan amendment.* During the term of a plan, a bank may request the OCC to approve an amendment to the plan on grounds that there has been a material change in circumstances. The OCC reserves the right to require a bank that requests an amendment to a plan to comply with the public participation process described in paragraph (e) of this section.

#### § 25.19 Assigned ratings.

(a) *General performance standards*—(1) *Bank's assigned rating.* The OCC determines the assigned rating for a bank evaluated under § 25.13 based on its presumptive rating under § 25.13, adjusted for performance context under § 25.16, and consideration of discriminatory or other illegal credit practices under § 25.17.

(2) *Assessment area assigned rating.* The OCC determines the assessment area assigned ratings for a bank evaluated under § 25.13 based on its assessment area presumptive rating under § 25.13, adjusted for performance context under § 25.16 and consideration of discriminatory or other illegal credit practices under § 25.17.

(b) *Strategic plans assigned rating.* A bank operating under a strategic plan will receive, as applicable, an assigned rating, assessment area assigned ratings, and state-level and multistate metropolitan statistical area assigned ratings of satisfactory or outstanding if it has met the measurable goals in the plan that correspond to those ratings after considering performance

## § 25.20

context under § 25.16 and discriminatory or other illegal credit practices under § 25.17.

### § 25.20 State/multistate metropolitan statistical area assigned rating.

For a bank evaluated under § 25.13 with interstate branches, the OCC will assign a rating for each state where the bank has a facility-based assessment area and each multistate metropolitan statistical area where the bank has a main office, branch, or non-branch deposit-taking facility in two or more states in the multistate metropolitan statistical area. The state or multistate metropolitan statistical area assigned rating for that state or multistate metropolitan statistical area is based on the ratings assigned to its assessment areas within that state or multistate metropolitan statistical area.

### Subpart E—Data Collection, Recordkeeping, and Reporting

SOURCE: 85 FR 34804, June 5, 2020, unless otherwise noted.

### § 25.21 Data collection for banks evaluated under the general performance standards in § 25.13 or a strategic plan under § 25.18.

(a) *General.* A bank evaluated under the general performance standards in § 25.13 and a bank evaluated under a strategic plan under § 25.18, unless otherwise determined in writing by the OCC, must collect and maintain the information required by this section until the completion of the relevant CRA evaluation.

(b) *Performance standards data.* A bank must collect and maintain, along with supporting documentation, its:

(1) Retail lending distribution test ratios calculated under § 25.12 for the borrower distribution and geographic distribution tests for each major retail lending product line evaluated in the assessment area;

(2) CRA evaluation measure and each assessment-area CRA evaluation measure calculated under § 25.11;

(3) Community development minimum and each assessment-area level community development minimum calculated under § 25.13; and

## 12 CFR Ch. I (1–1–21 Edition)

(4) Presumptive ratings under § 25.13.

(c) *Qualifying activities and retail domestic deposit data required to be collected and maintained.* A bank subject to this section must collect and maintain the following data and supporting documentation for all qualifying activities and certain non-qualifying activities conducted by the bank:

(1) *Qualifying loan data.* Except as provided in paragraph (c)(8) of this section, for each qualifying loan:

(i) A unique number or alpha-numeric symbol to identify the relevant loan file;

(ii) An indicator of whether the loan is a retail loan or a community development loan;

(iii) Date of:

(A) Origination for loans originated by the bank, if applicable;

(B) Purchase for loans not originated by the bank, if applicable; and

(C) Sale if the loan is a retail loan and sold by the bank within 365 days of origination;

(iv) An indicator of whether the loan was originated or purchased by the bank;

(v) The loan amount at origination or purchase;

(vi) The outstanding dollar amount of the loan, as of the close of business on the last day of the month, for each month that the loan is on-balance sheet;

(vii) The loan location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract;

(viii) Portion of the community development loan that is partially qualifying, if applicable;

(ix) An indicator of whether a multiplier applies;

(x) The income or gross annual revenue of the borrower; and

(xi) The criteria in § 25.04 that the loan satisfies or that it is on the illustrative list referenced in § 25.05 and whether it serves a particular assessment area, if applicable.

(2) *Other loan data.* A bank must collect and maintain the following data and supporting documentation for originations of non-qualifying home

mortgage loans, small loans to businesses, small loans to farms, and consumer loans by the bank:

(i) A unique number or alpha-numeric symbol to identify the relevant loan file;

(ii) The date of origination;

(iii) The loan amount at origination;

(iv) The loan location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract; and

(v) The income or gross annual revenue of the borrower.

(3) *Number of home mortgage.* For the home mortgage product line, for each county or county equivalent:

(i) The number of loans originated;

(ii) The number of loans originated in low- and moderate-income census tracts; and

(iii) The number of loans originated to low- and moderate-income borrowers.

(4) *Number of small loans to businesses.* For the small loan to a business product line, for each county or county equivalent:

(i) The number of loans originated;

(ii) The number of loans originated in low- and moderate-income census tracts; and

(iii) The number of loans originated to CRA-eligible businesses.

(5) *Number of small loans to farms.* For the small loan to a farm product line for each county or county equivalent:

(i) The number of loans originated;

(ii) The number of loans originated in low- and moderate-income census tracts; and

(iii) The number of loans originated to CRA-eligible farms.

(6) *Number of consumer loans.* For each other consumer loan product line as defined in § 25.03, for each county or county equivalent:

(i) The number of loans originated; and

(ii) The number of loans originated to low- and moderate-income borrowers.

(7) *Community development investment data.* Except as provided in paragraph (c)(8) of this section, for each community development investment:

(i) A unique number, alpha-numeric symbol, or another mechanism to iden-

tify the community development investment;

(ii) Date of community development investment by the bank;

(iii) The outstanding dollar value of the community development investment, as of the close of business on the last day of the month, for each month that the investment is on-balance sheet, if applicable;

(iv) The quantified dollar value of the monetary donation, if applicable;

(v) The quantified dollar value of the in-kind donation, if applicable;

(vi) The community development investment location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract, if applicable;

(vii) Portion of the community development investment that is partially qualifying, if applicable;

(viii) An indicator of whether a multiplier applies; and

(ix) The criteria in § 25.04 that the community development investment satisfies or that it is on the illustrative list referenced in § 25.05 and whether it serves a particular assessment area, if applicable.

(8) *Community development services data.* For each community development service:

(i) A unique number or alpha-numeric symbol identifying the community development service;

(ii) The quantified dollar value of the community development service;

(iii) A description of the community development service;

(iv) The date the community development service was performed;

(v) The community development service location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract, if applicable;

(vi) Portion of the community development service that is partially qualifying, if applicable;

(vii) An indicator of whether a multiplier applies; and

(viii) The qualifying activity criteria in § 25.04 that the community development service satisfies or that it is on

## § 25.22

the illustrative list referenced in § 25.05.

(9) *Grandfathered qualifying activities.* For each activity that qualifies under § 25.04(a)(1)(3):

(i) A unique number or alpha-numeric symbol identifying activity;

(ii) The outstanding dollar value of the activity, as of the close of business on the last day of the month, for each month that the activity is on-balance sheet,

(iii) A description of the activity, including whether it is a retail loan, community development loan, or community development investment;

(iv) The activity location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract, if applicable;

(v) Portion of the activity that is partially qualifying, if applicable;

(vi) An indicator of whether a multiplier applies; and

(vii) A statement certifying that the activity would have received positive consideration in a CRA performance evaluation on the date prior to October 1, 2020.

(10) *Retail domestic deposit data.* The value of each retail domestic deposit account and the physical address and associated Federal Information Processing Standards code for the metropolitan statistical area, state, and county or county equivalent of each depositor as of the close of business on the last day of each quarter during the examination period.

(d) *Assessment areas.* A bank must collect and maintain a list of its assessment area(s) showing within the assessment area(s) each:

- (1) County or county equivalent;
- (2) Metropolitan division;
- (3) Nonmetropolitan area;
- (4) Metropolitan statistical area; or
- (5) State.

(e) *Deposit-taking facilities.* For each deposit-taking facility, a bank must collect and maintain

(1) An indicator of whether it was a branch or a non-branch deposit-taking facility; and

(2) The physical address and the associated Federal Information Processing Standards code for the metropolitan

## 12 CFR Ch. I (1–1–21 Edition)

statistical area, state, county or county equivalent, and census tract.

EDITORIAL NOTE: At 85 FR 32804, June 5, 2020, subpart E was added to part 25, and at that time, § 25.21 contained two paragraphs designated (c)(7)(ii).

### § 25.22 Retail domestic deposit data collection for small and intermediate banks evaluated under the small and intermediate bank performance standards in § 25.14.

A small or intermediate bank evaluated under the small and intermediate bank performance standards in § 25.14 must collect and maintain data on the value of each retail domestic deposit account and the physical address of each depositor as of the close of business on the last day of each quarter during the examination period until the completion of its next CRA evaluation.

### § 25.23 Data collection for wholesale and limited purpose banks evaluated under the wholesale and limited purpose bank performance standards in § 25.15.

(a) *General.* A wholesale or limited purpose bank evaluated under the wholesale and limited purpose bank performance standards in § 25.15 must collect and maintain the information required by this section until the completion of the relevant CRA evaluation.

(b) *Qualifying community development loan, community development investment, and community development service required to be collected and maintained.* A bank subject to this section must collect and maintain the following data and supporting documentation for all qualifying community development loans, community development investments, and community development services conducted by the bank:

(1) *Qualifying community development loan data.* Except as provided in paragraph (b)(4) of this section for each qualifying loan:

(i) A unique number or alpha-numeric symbol to identify the relevant loan file;

(ii) Date of:

(A) Origination for loans originated by the bank, if applicable; and

(B) Purchase for loans not originated by the bank, if applicable;

(iii) An indicator of whether the loan was originated or purchased by the bank;

(iv) The loan amount at origination or purchase;

(v) The loan location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract; and

(vi) The criteria in §25.04 that the loan satisfies or that it is on the illustrative list referenced in §25.05 and whether it serves a particular assessment area, if applicable.

(2) *Community development investment data.* Except as provided in paragraph (b)(4) of this section, for each community development investment:

(i) A unique number, alpha-numeric symbol, or another mechanism to identify the community development investment;

(ii) Date of community development investment by the bank;

(iii) The value of the community development investment;

(iv) The community development investment location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract, if applicable; and

(v) The criteria in §25.04 that the community development investment satisfies or that it is on the illustrative list referenced in §25.05 and whether it serves a particular assessment area, if applicable.

(3) *Community development services data.* For each community development service:

(i) A unique number or alpha-numeric symbol identifying the community development service;

(ii) A description of the community development service;

(iii) The date the community development service was performed;

(iv) The community development service location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract, if applicable; and

(v) The qualifying activity criteria in §25.04 that the community develop-

ment service satisfies or that it is on the illustrative list referenced in §25.05.

(4) *Grandfathered qualifying activities.* For each activity that qualifies under §25.04(d):

(i) A unique number or alpha-numeric symbol identifying the activity;

(ii) The origination value of the community development loan or the community development investment;

(iii) A description of the activity, including whether it is a community development loan or community development investment;

(iv) The activity location and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract, if applicable; and

(v) A statement certifying that the activity that would have received positive consideration in a CRA performance evaluation on the date prior to October 1, 2020.

(c) *Retail domestic deposit data.* The value of each retail domestic deposit account and the physical address and associated Federal Information Processing Standards code for the metropolitan statistical area, state, and county or county equivalent of each depositor as of the close of business on the last day of each quarter during the examination period.

(d) *Assessment areas.* A bank must collect and maintain a list of its assessment area(s) showing within the assessment area(s) each:

(1) County or county equivalent;

(2) Metropolitan division;

(3) Nonmetropolitan area;

(4) Metropolitan statistical area; or

(5) State.

(e) *Deposit-taking facilities.* For each deposit-taking facility, a bank must collect and maintain

(1) An indicator of whether it was a branch or a non-branch deposit-taking facility; and

(2) The physical address and the associated Federal Information Processing Standards code for the metropolitan statistical area, state, county or county equivalent, and census tract.

#### § 25.24 Activity location.

(a) For the purpose of this part:

## § 25.25

(1) A consumer loan is located at the borrower's physical address on file with the bank at the time of origination;

(2) A home mortgage loan is located at the address of the property to which the loan relates; and

(3) A business or farm loan is located at the physical address of the main business facility or farm or the physical address where the loan proceeds will be applied, as indicated by the borrower; and

(b) For the purpose of this part, the location of a community development loan, a community development investment, or a community development service is:

(1) The address of a particular project to the extent a bank can document that the services or funding it provided was allocated to that particular project; or

(2) Determined by allocating the activity across all of a bank's assessment areas and other metropolitan statistical areas or non-metropolitan statistical areas served by the activity according to the share of the bank's deposits in those areas, treating the bank's deposits in the region served by the activity as if they were all of the bank's deposits, to the extent the bank cannot document that the services or funding it provided was allocated to a particular project.

### § 25.25 Recordkeeping.

Banks must keep the data collected under § 25.21, § 25.22, and § 25.23 in machine readable form (as prescribed by the OCC) until the completion of their next CRA evaluation.

### § 25.26 Reporting for banks evaluated under the general performance standards in § 25.13, the wholesale and limited purpose bank performance standards in § 25.15, or a strategic plan under § 25.18.

(a) *General.* Banks evaluated under the general performance standards in § 25.13, the wholesale and limited purpose bank performance standards in § 25.15, or a strategic plan under § 25.18, unless otherwise determined in writing by the OCC, must report the information required by this section.

(b) *Performance standards, qualifying activities, and retail domestic deposits data reporting—(1) Banks evaluated*

## 12 CFR Ch. I (1–1–21 Edition)

*under the general performance standards or a strategic plan.* (i) A bank evaluated under the general performance standards or under a strategic plan must report to the OCC:

(A) On an annual basis, the information required by § 25.21(b)(2), as applicable; and

(B) At the end of the evaluation period, the information required by § 25.21(b)(1) and (b)(4), as applicable.

(ii) On an annual basis, a bank subject to this section must report to the OCC the following data for all qualifying activities conducted during the annual period:

(A) The quantified dollar value of qualifying retail loans;

(B) The quantified dollar value of community development loans;

(C) The quantified dollar value of community development investments; and

(D) The quantified dollar value of community development services.

(iii) A bank subject to this section must annually report to the OCC the information required by § 25.21(c)(3)–(6) for loans originated during the annual period.

(iv) A bank subject to this section must annually report its average quarterly retail domestic deposits as of the close of business on the last day of each quarter.

(2) *Banks evaluated under the wholesale and limited purpose bank performance standards.* On an annual basis, a bank evaluated under the wholesale and limited purpose bank performance standards must report following data for all qualifying activities conducted during the annual period:

(i) The value of community development loans; and

(ii) The value of community development investments.

(c) *Assessment area data.* For each assessment area, a bank subject to this section must annually report to the OCC the information required by § 25.21(e).

(d) *Performance context information.* A bank subject to this section must report performance context information on the form required by § 25.16(c) before the beginning of its CRA performance evaluation.

(e) *Form.* A bank subject to this section must use the CRA data reporting form available at *www.occ.gov* to meet the reporting requirements in this section.

**§ 25.27 Public disclosures.**

(a) *Individual CRA Disclosure Statement.* The OCC prepares annually a CRA Disclosure Statement for each bank evaluated under § 25.13 that contains the bank's:

- (1) Quantified dollar value of qualifying retail loans;
- (2) Quantified dollar value of community development loans;
- (3) Quantified dollar value of community development investments; and
- (4) Quantified dollar value of community development services.

(b) *Aggregate CRA Disclosure Statement.* The OCC prepares annually, for each county, an aggregate CRA Disclosure Statement of home mortgage, consumer, small loans to businesses, and small loans to farms lending by all banks subject to reporting under this part. This disclosure statement includes the following information, at the county level, from all banks evaluated under § 25.13, except that the OCC may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or bank:

- (1) The number of home mortgage loan originations;
- (2) The number of home mortgage loan originations to low- or moderate-income individuals and families;
- (3) The number of originations for each consumer loan product line;
- (4) The number of originations to low- or moderate- income individuals and families for each consumer loan product line;
- (5) The number of small loans to businesses;
- (6) The number of small loans to businesses in low- and moderate-income census tracts;
- (7) The number of small loans to businesses provided to CRA-eligible businesses;
- (8) The number of small loans to farms;
- (9) The number of small loans to farms in low- and moderate-income census tracts; and

(10) The number of small loans to farms provided to CRA-eligible farms;

(c) *Availability of CRA disclosure statements.* The OCC will annually make publicly available the aggregate and individual CRA Disclosure Statements, described in paragraphs (a) and (b) of this section.

(d) *Availability of ratings.* The OCC will make available the ratings of all OCC-regulated banks and a list of all banks that achieve an assigned rating of outstanding. A bank that achieves an outstanding assigned rating will receive a certificate or seal of achievement that may be displayed on its website and in its main office, branches, and non-branch deposit-taking facilities.

**§ 25.28 Content and availability of public file.**

(a) *Information available to the public.* A bank must maintain a public file that includes the following information:

- (1) All written comments received from the public for the current year and each of the prior two calendar years that specifically relate to assessment area needs and opportunities, and any response to the comments by the bank, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the bank or publication of which would violate specific provisions of law;
- (2) A copy of the public section of the bank's most recent CRA Performance Evaluation prepared by the OCC. The bank must place this copy in the public file within 30 business days after its receipt from the OCC;
- (3) A list of the bank's branches, their street addresses, and census tracts;
- (4) A list of branches opened or closed by the bank during the current year and each of the prior two calendar years, their street addresses, and census tracts;
- (5) A list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the bank's branches and descriptions of material differences in the availability or cost of services at

## § 25.29

particular branches, if any. At its option, a bank may include information regarding the availability of alternative systems for delivering retail banking services (e.g., ATMs, ATMs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs);

(6) A map of each assessment area showing the boundaries of the area and identifying the counties or county equivalents contained within the area, either on the map or in a separate list; and

(7) Any other information the bank chooses.

(b) *Additional information available to the public*—(1) *Banks with strategic plans.* A bank that has been approved to be assessed under a strategic plan must include in its public file a copy of that plan. A bank need not include information submitted to the OCC on a confidential basis in conjunction with the plan.

(2) *Banks with less than satisfactory ratings.* A bank that received a less than satisfactory rating during its most recent examination must include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The bank must update the description quarterly.

(c) *Availability of public information.* A bank must make available to the public the information required in this section.

(d) *Updating.* Except as otherwise provided in this section, a bank must ensure that the information required by this section is current as of April 1 of each year.

### § 25.29 Availability of planned evaluation schedule.

The OCC will make available at least 30 days in advance of the beginning of each calendar quarter a list of banks scheduled for CRA evaluations in that quarter.

### § 25.30 Public notice by banks.

A bank must make available to the public the notice set forth in appendix B of this part. Parenthetical text must

## 12 CFR Ch. I (1–1–21 Edition)

be adjusted by each bank as appropriate. Bracketed text must be included if applicable.

### Subpart F—Prohibition Against Use of Interstate Branches Primarily for Deposit Production

SOURCE: 62 FR 47734, Sept. 10, 1997, unless otherwise noted. Redesignated at 85 FR 34804, June 5, 2020.

#### § 25.31 Purpose and scope.

(a) *Purpose.* The purpose of this subpart is to implement section 109 (12 U.S.C. 1835a) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act).

(b) *Scope.* (1) This subpart applies to any national bank that has operated a covered interstate branch for a period of at least one year, and any foreign bank that has operated a covered interstate branch that is a Federal branch for a period of at least one year.

(2) This subpart describes the requirements imposed under 12 U.S.C. 1835a, which requires the appropriate Federal banking agencies (the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation) to prescribe uniform rules that prohibit a bank from using any authority to engage in interstate branching pursuant to the Interstate Act, or any amendment made by the Interstate Act to any other provision of law, primarily for the purpose of deposit production.

#### § 25.32 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Bank* means, unless the context indicates otherwise, a national bank and a foreign bank as that term is defined in 12 U.S.C. 3101(7) and 12 CFR 28.11(i).

(b) *Covered interstate branch* means:

(1) Any branch of a national bank, and any Federal branch of a foreign bank, that:

(i) Is established or acquired outside the bank's home State pursuant to the interstate branching authority granted by the Interstate Act or by any amendment made by the Interstate Act to any other provision of law; or

(ii) Could not have been established or acquired outside of the bank's home State but for the establishment or acquisition of a branch described in paragraph (b)(1)(i) of this section; and

(2) Any bank or branch of a bank controlled by an out-of-State bank holding company.

(c) *Federal branch* means Federal branch as that term is defined in 12 U.S.C. 3101(6) and 12 CFR 28.11(i).

(d) *Home State* means:

(1) With respect to a State bank, the State that chartered the bank;

(2) With respect to a national bank, the State in which the main office of the bank is located;

(3) With respect to a bank holding company, the State in which the total deposits of all banking subsidiaries of such company are the largest on the later of:

(i) July 1, 1966; or

(ii) The date on which the company becomes a bank holding company under the Bank Holding Company Act;

(4) With respect to a foreign bank:

(i) For purposes of determining whether a U.S. branch of a foreign bank is a covered interstate branch, the home State of the foreign bank as determined in accordance with 12 U.S.C. 3103(c) and 12 CFR 28.11(o); and

(ii) For purposes of determining whether a branch of a U.S. bank controlled by a foreign bank is a covered interstate branch, the State in which the total deposits of all banking subsidiaries of such foreign bank are the largest on the later of:

(A) July 1, 1966; or

(B) The date on which the foreign bank becomes a bank holding company under the Bank Holding Company Act.

(e) *Host State* means a State in which a covered interstate branch is established or acquired.

(f) *Host state loan-to-deposit ratio* generally means, with respect to a particular host state, the ratio of total loans in the host state relative to total deposits from the host state for all banks (including institutions covered under the definition of "bank" in 12 U.S.C. 1813(a)(1)) that have that state as their home state, as determined and updated periodically by the appropriate Federal banking agencies and made available to the public.

(g) *Out-of-State bank holding company* means, with respect to any State, a bank holding company whose home State is another State.

(h) *State* means state as that term is defined in 12 U.S.C. 1813(a)(3).

(i) *Statewide loan-to-deposit ratio* means, with respect to a bank, the ratio of the bank's loans to its deposits in a state in which the bank has one or more covered interstate branches, as determined by the OCC.

[62 FR 47734, Sept. 10, 1997, as amended at 67 FR 38847, June 6, 2002; 67 FR 46842, July 17, 2002; 85 FR 34808, June 5, 2020]

#### § 25.33 Loan-to-deposit ratio screen.

(a) *Application of screen.* Beginning no earlier than one year after a covered interstate branch is acquired or established, the OCC will consider whether the bank's statewide loan-to-deposit ratio is less than 50 percent of the relevant host State loan-to-deposit ratio.

(b) *Results of screen.* (1) If the OCC determines that the bank's statewide loan-to-deposit ratio is 50 percent or more of the host state loan-to-deposit ratio, no further consideration under this subpart is required.

(2) If the OCC determines that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, or if reasonably available data are insufficient to calculate the bank's statewide loan-to-deposit ratio, the OCC will make a credit needs determination for the bank as provided in § 25.34.

[62 FR 47734, Sept. 10, 1997, as amended at 67 FR 38848, June 6, 2002; 85 FR 34808, June 5, 2020]

#### § 25.34 Credit needs determination.

(a) *In general.* The OCC will review the loan portfolio of the bank and determine whether the bank is reasonably helping to meet the credit needs of the communities in the host state that are served by the bank.

(b) *Guidelines.* The OCC will use the following considerations as guidelines when making the determination pursuant to paragraph (a) of this section:

(1) Whether covered interstate branches were formerly part of a failed or failing depository institution;

## § 25.35

(2) Whether covered interstate branches were acquired under circumstances where there was a low loan-to-deposit ratio because of the nature of the acquired institution's business or loan portfolio;

(3) Whether covered interstate branches have a high concentration of commercial or credit card lending, trust services, or other specialized activities, including the extent to which the covered interstate branches accept deposits in the host state;

(4) The CRA ratings received by the bank, if any;

(5) Economic conditions, including the level of loan demand, within the communities served by the covered interstate branches;

(6) The safe and sound operation and condition of the bank; and

(7) The OCC's CRA regulations (subparts A through D of this part) and interpretations of those regulations.

### § 25.35 Sanctions.

(a) *In general.* If the OCC determines that a bank is not reasonably helping to meet the credit needs of the communities served by the bank in the host state, and that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, the OCC:

(1) May order that a bank's covered interstate branch or branches be closed unless the bank provides reasonable assurances to the satisfaction of the OCC, after an opportunity for public comment, that the bank has an acceptable plan under which the bank will reasonably help to meet the credit needs of the communities served by the bank in the host state; and

(2) Will not permit the bank to open a new branch in the host state that would be considered to be a covered interstate branch unless the bank provides reasonable assurances to the satisfaction of the OCC, after an opportunity for public comment, that the bank will reasonably help to meet the credit needs of the community that the new branch will serve.

(b) *Notice prior to closure of a covered interstate branch.* Before exercising the OCC's authority to order the bank to close a covered interstate branch, the OCC will issue to the bank a notice of

## 12 CFR Ch. I (1-1-21 Edition)

the OCC's intent to order the closure and will schedule a hearing within 60 days of issuing the notice.

(c) *Hearing.* The OCC will conduct a hearing scheduled under paragraph (b) of this section in accordance with the provisions of 12 U.S.C. 1818(h) and 12 CFR part 19.

### APPENDIX A TO PART 25—SMALL BANK, INTERMEDIATE BANK, WHOLESALE BANK, AND LIMITED PURPOSE BANK RATINGS

(a) *Ratings in general*—(1) In assigning a rating, the OCC evaluates a small bank's, intermediate bank's, wholesale bank's, or limited purpose bank's performance under the applicable performance criteria in §25.14 and §25.15, adjusting for performance context in §25.16 and consideration of any evidence of discriminatory and illegal credit practices as described in §25.17. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority depository institutions, women's depository institutions, and low-income credit unions.

(2) A bank's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The bank's overall performance, however, must be consistent with safe and sound banking practices and generally with the appropriate rating profile as follows.

(b) *Banks evaluated under the small bank and intermediate bank performance standards*—(1) *Lending test ratings*—(i) *Eligibility for a satisfactory lending test rating.* The OCC rates a small bank's or intermediate bank's lending performance "satisfactory" if, in general, the bank demonstrates:

(A) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, other retail and community development lending-related activities such as loan originations for sale to the secondary markets and community development loans and community development investments;

(B) A majority of its loans and, as appropriate, other retail and community development lending-related activities, are in its assessment area;

(C) A distribution of loans to and, as appropriate, other retail and community development lending-related activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the bank's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the bank's assessment area(s).

(i) *Eligibility for an "outstanding" lending test rating.* A small bank or intermediate bank that meets each of the standards for a "satisfactory" rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of "outstanding."

(iii) *Needs to improve or substantial non-compliance ratings.* A small bank or intermediate bank may also receive a lending test rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standard for a "satisfactory" rating.

(2) *Community development test ratings for intermediate banks—(i) Eligibility for a satisfactory community development test rating.* The OCC rates an intermediate bank's community development performance "satisfactory" if the bank demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, community development investments, and community development services. The adequacy of the bank's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the bank's assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The OCC rates an intermediate bank's community development performance "outstanding" if the bank demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, community development investments, and community development services, as appropriate, considering the bank's capacity and the need and availability of such opportunities for community development in the bank's assessment area(s).

(iii) *Needs to improve or substantial non-compliance ratings.* An intermediate bank may also receive a community development test rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

(3) *Bank rating—(i) Eligibility for a satisfactory rating.* No intermediate bank may receive an assigned rating of "satisfactory" unless it receives a rating of at least "satisfactory" on both the lending test and the community development test.

(ii) *Eligibility for an outstanding rating—(A) An intermediate bank that receives an "outstanding" rating on one test and at least a "satisfactory" on the other test may receive rating of "outstanding."*

(B) A small bank that meets each of the standards for a "satisfactory" rating under the lending test and exceeds some or all of those standards may warrant consideration for an assigned rating of "outstanding." In assessing whether a bank's performance is "outstanding," the OCC considers the extent to which the bank exceeds each of the performance standards for a "satisfactory" rating and its performance in making community development investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(iii) *Needs to improve or substantial non-compliance overall ratings.* A small bank or intermediate bank may also receive a rating of "needs to improve" or "substantial non-compliance" assigned rating depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

(c) *Banks evaluated under the wholesale and limited purpose bank performance standards.* The OCC assigns each wholesale or limited purpose bank's performance one of the four following ratings.

(1) *Outstanding.* The OCC rates a wholesale or limited purpose bank's performance "outstanding" if, in general, it demonstrates:

(i) A high level of community development loans, community development services, or community development investments, particularly investments that are not routinely provided by private investors;

(ii) Extensive use of innovative or complex community development loans, community development investments, or community development services; and

(iii) Excellent responsiveness to credit and community development needs in its assessment area(s).

(2) *Satisfactory.* The OCC rates a wholesale or limited purpose bank's performance "satisfactory" if, in general, it demonstrates:

(i) An adequate level of community development loans, community development services, or community development investments, particularly investments that are not routinely provided by private investors;

(ii) Occasional use of innovative or complex community development loans, community development investments, or community development services; and

(iii) Adequate responsiveness to credit and community development needs in its assessment area(s).

(3) *Needs to improve.* The OCC rates a wholesale or limited purpose bank's performance as "needs to improve" if, in general, it demonstrates:

(i) A poor level of community development loans, community development services, or community development investments, particularly investments that are not routinely provided by private investors;

(ii) Rare use of innovative or complex community development loans, community development investments, or community development services; and

(iii) Poor responsiveness to credit and community development needs in its assessment area(s).

(4) *Substantial noncompliance.* The OCC rates a wholesale or limited purpose bank's performance in "substantial noncompliance" if, in general, it demonstrates:

(i) Few, if any, community development loans, community development services, or community development investments, particularly investments that are not routinely provided by private investors;

(ii) No use of innovative or complex qualified community development loans, community development investments, or community development services; and

(iii) Very poor responsiveness to credit and community development needs in its assessment area(s).

[85 FR 34808, June 5, 2020]

#### APPENDIX B TO PART 25—COMMUNITY REINVESTMENT ACT NOTICE

Under the Federal Community Reinvestment Act (CRA), the Comptroller of the Currency (OCC) evaluates our record of helping to meet the credit needs of this community, consistent with safe and sound operations. The OCC also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA, including, for example, information about our branches, such as their location and services provided at them; the public section of our most recent CRA Performance Evaluation, prepared by the OCC; and comments received from the public relating to assessment area needs and opportunities, as well as our responses to those comments. You may review this information today by reviewing the public file which is available at (web address and/or physical address at which the public file can be reviewed and copied).

You may also have access to the following additional information, which we will make available to you after you make a request to us: (1) A map showing the assessment area containing a select branch, which is the area in which the OCC evaluates our CRA performance for that particular community; (2) branch addresses and associated branch facilities and hours in any assessment area; (3)

a list of services we provide at those locations; (4) our most recent rating in the assessment area; and (5) copies of all written comments received by us that specifically relate to the needs and opportunities of a given assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

At least 30 days before the beginning of each quarter, the OCC publishes a nationwide list of the (entity type) that are scheduled for CRA examination in that quarter. This list is available from the Deputy Comptroller (address). You may send written comments regarding the needs and opportunities of any of the (entity type)'s assessment area(s) to (name, address, and email address of official at bank) and Deputy Comptroller (address and email address). Your comments, together with any response by us, will be considered by the Comptroller in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Deputy Comptroller. You may also request from the Deputy Comptroller an announcement of our applications covered by the CRA filed with the Comptroller. (We are an affiliate of (name of holding company), a (entity type) holding company. You may request from the (title of responsible official), Federal Reserve Bank of \_\_\_\_\_ (address) an announcement of applications covered by the CRA filed by (entity type) holding companies.)

[85 FR 34809, June 5, 2020]

#### APPENDIX C TO PART 25—COMMUNITY REINVESTMENT ACT REGULATIONS (ALTERNATIVE COMPLIANCE)

NOTE: The content of this appendix reproduces parts 25 and 195 implementing the Community Reinvestment Act as of the date prior to October 1, 2020.

#### PART 25—COMMUNITY REINVESTMENT ACT AND INTERSTATE DEPOSIT PRODUCTION REGULATIONS

##### SUBPART A—GENERAL

##### § 25.11 Authority, purposes, and scope.

(a) Authority and OMB control number—(1) Authority. The authority for subparts A, B, C, D, and E is 12 U.S.C. 21, 22, 26, 27, 30, 36, 93a, 161, 215, 215a, 481, 1814, 1816, 1828(c), 1835a, 2901 through 2907, and 3101 through 3111.

(2) OMB control number. The information collection requirements contained in this part were approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 1557–0160.

(b) *Purposes.* In enacting the Community Reinvestment Act (CRA), the Congress required each appropriate Federal financial supervisory agency to assess an institution's record of helping to meet the credit needs of the local communities in which the institution is chartered, consistent with the safe and sound operation of the institution, and to take this record into account in the agency's evaluation of an application for a deposit facility by the institution. This part is intended to carry out the purposes of the CRA by:

(1) Establishing the framework and criteria by which the Office of the Comptroller of the Currency (OCC) assesses a bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank; and

(2) Providing that the OCC takes that record into account in considering certain applications.

(c) *Scope*—(1) General. This part applies to all banks except as provided in paragraphs (c)(2) and (c)(3) of this section.

(2) Federal branches and agencies. (i) This part applies to all insured Federal branches and to any Federal branch that is uninsured that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)).

(ii) Except as provided in paragraph (c)(2)(i) of this section, this part does not apply to Federal branches that are uninsured, limited Federal branches, or Federal agencies, as those terms are defined in part 28 of this chapter.

(3) Certain special purpose banks. This part does not apply to special purpose banks that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incident to their specialized operations. These banks include banker's banks, as defined in 12 U.S.C. 24 (Seventh), and banks that engage only in one or more of the following activities: providing cash management controlled disbursement services or serving as correspondent banks, trust companies, or clearing agents.

#### § 25.12 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company. The term "control" has the meaning given to that term in 12 U.S.C. 1841(a)(2), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

(b) *Area median income* means:

(1) The median family income for the MSA, if a person or geography is located in an MSA, or for the metropolitan division, if a person or geography is located in an MSA

that has been subdivided into metropolitan divisions; or

(2) The statewide nonmetropolitan median family income, if a person or geography is located outside an MSA.

(c) *Assessment area* means a geographic area delineated in accordance with § 25.41.

(d) *Automated teller machine (ATM)* means an automated, unstaffed banking facility owned or operated by, or operated exclusively for, the bank at which deposits are received, cash dispersed, or money lent.

(e) *Bank* means a national bank (including a Federal branch as defined in part 28 of this chapter) with Federally insured deposits, except as provided in § 25.11(c).

(f) *Branch* means a staffed banking facility authorized as a branch, whether shared or unshared, including, for example, a mini-branch in a grocery store or a branch operated in conjunction with any other local business or nonprofit organization.

(g) *Community development* means:

(1) Affordable housing (including multifamily rental housing) for low- or moderate-income individuals;

(2) Community services targeted to low- or moderate-income individuals;

(3) Activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of \$1 million or less; or

(4) Activities that revitalize or stabilize—

(i) Low- or moderate-income geographies;

(ii) Designated disaster areas; or

(iii) Distressed or underserved nonmetropolitan middle-income geographies designated by the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and OCC, based on—

(A) Rates of poverty, unemployment, and population loss; or

(B) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.

(h) *Community development loan* means a loan that:

(1) Has as its primary purpose community development; and

(2) Except in the case of a wholesale or limited purpose bank:

(i) Has not been reported or collected by the bank or an affiliate for consideration in the bank's assessment as a home mortgage, small business, small farm, or consumer loan, unless the loan is for a multifamily dwelling (as defined in § 1003.2(n) of this title); and

(ii) Benefits the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(i) *Community development service* means a service that:

(1) Has as its primary purpose community development;

(2) Is related to the provision of financial services; and

(3) Has not been considered in the evaluation of the bank's retail banking services under § 25.24(d).

(j) *Consumer loan* means a loan to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a home mortgage, small business, or small farm loan. Consumer loans include the following categories of loans:

(1) Motor vehicle loan, which is a consumer loan extended for the purchase of and secured by a motor vehicle;

(2) Credit card loan, which is a line of credit for household, family, or other personal expenditures that is accessed by a borrower's use of a "credit card," as this term is defined in § 1026.2 of this title;

(3) Other secured consumer loan, which is a secured consumer loan that is not included in one of the other categories of consumer loans; and

(4) Other unsecured consumer loan, which is an unsecured consumer loan that is not included in one of the other categories of consumer loans.

(k) *Geography* means a census tract delineated by the United States Bureau of the Census in the most recent decennial census.

(l) *Home mortgage loan* means a closed-end mortgage loan or an open-end line of credit as these terms are defined under § 1003.2 of this title, and that is not an excluded transaction under § 1003.3(c)(1) through (10) and (13) of this title.

(m) *Income level* includes:

(1) Low-income, which means an individual income that is less than 50 percent of the area median income, or a median family income that is less than 50 percent, in the case of a geography.

(2) Moderate-income, which means an individual income that is at least 50 percent and less than 80 percent of the area median income, or a median family income that is at least 50 and less than 80 percent, in the case of a geography.

(3) Middle-income, which means an individual income that is at least 80 percent and less than 120 percent of the area median income, or a median family income that is at least 80 and less than 120 percent, in the case of a geography.

(4) Upper-income, which means an individual income that is 120 percent or more of the area median income, or a median family income that is 120 percent or more, in the case of a geography.

(n) *Limited purpose bank* means a bank that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a limited purpose bank is in effect, in accordance with § 25.25(b).

(o) *Loan location*. A loan is located as follows:

(1) A consumer loan is located in the geography where the borrower resides;

(2) A home mortgage loan is located in the geography where the property to which the loan relates is located; and

(3) A small business or small farm loan is located in the geography where the main business facility or farm is located or where the loan proceeds otherwise will be applied, as indicated by the borrower.

(p) *Loan production office* means a staffed facility, other than a branch, that is open to the public and that provides lending-related services, such as loan information and applications.

(q) *Metropolitan division* means a metropolitan division as defined by the Director of the Office of Management and Budget.

(r) *MSA* means a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(s) *Nonmetropolitan area* means any area that is not located in an MSA.

(t) *Qualified investment* means a lawful investment, deposit, membership share, or grant that has as its primary purpose community development.

(u) *Small bank*—(1) Definition. *Small bank* means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.305 billion. Intermediate small bank means a small bank with assets of at least \$326 million as of December 31 of both of the prior two calendar years and less than \$1.305 billion as of December 31 of either of the prior two calendar years.

(2) *Adjustment*. The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the OCC, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

(v) *Small business loan* means a loan included in "loans to small businesses" as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(w) *Small farm loan* means a loan included in "loans to small farms" as defined in the instructions for preparation of the Consolidated Report of Condition and Income.

(x) *Wholesale bank* means a bank that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and for

which a designation as a wholesale bank is in effect, in accordance with §25.25(b).

SUBPART B—STANDARDS FOR ASSESSING  
PERFORMANCE

**§ 25.21 Performance tests, standards, and ratings, in general.**

(a) *Performance tests and standards.* The OCC assesses the CRA performance of a bank in an examination as follows:

(1) *Lending, investment, and service tests.* The OCC applies the lending, investment, and service tests, as provided in §§25.22 through 25.24, in evaluating the performance of a bank, except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section.

(2) *Community development test for wholesale or limited purpose banks.* The OCC applies the community development test for a wholesale or limited purpose bank, as provided in §25.25, except as provided in paragraph (a)(4) of this section.

(3) *Small bank performance standards.* The OCC applies the small bank performance standards as provided in §25.26 in evaluating the performance of a small bank or a bank that was a small bank during the prior calendar year, unless the bank elects to be assessed as provided in paragraphs (a)(1), (a)(2), or (a)(4) of this section. The bank may elect to be assessed as provided in paragraph (a)(1) of this section only if it collects and reports the data required for other banks under §25.42.

(4) *Strategic plan.* The OCC evaluates the performance of a bank under a strategic plan if the bank submits, and the OCC approves, a strategic plan as provided in §25.27.

(b) *Performance context.* The OCC applies the tests and standards in paragraph (a) of this section and also considers whether to approve a proposed strategic plan in the context of:

(1) Demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant data pertaining to a bank's assessment area(s);

(2) Any information about lending, investment, and service opportunities in the bank's assessment area(s) maintained by the bank or obtained from community organizations, state, local, and tribal governments, economic development agencies, or other sources;

(3) The bank's product offerings and business strategy as determined from data provided by the bank;

(4) Institutional capacity and constraints, including the size and financial condition of the bank, the economic climate (national, regional, and local), safety and soundness limitations, and any other factors that significantly affect the bank's ability to provide lending, investments, or services in its assessment area(s);

(5) The bank's past performance and the performance of similarly situated lenders;

(6) The bank's public file, as described in §25.43, and any written comments about the bank's CRA performance submitted to the bank or the OCC; and

(7) Any other information deemed relevant by the OCC.

(c) *Assigned ratings.* The OCC assigns to a bank one of the following four ratings pursuant to §25.28 and appendix A of this part: "outstanding"; "satisfactory"; "needs to improve"; or "substantial noncompliance" as provided in 12 U.S.C. 2906(b)(2). The rating assigned by the OCC reflects the bank's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the bank.

(d) *Safe and sound operations.* This part and the CRA do not require a bank to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the OCC anticipates banks can meet the standards of this part with safe and sound loans, investments, and services on which the banks expect to make a profit. Banks are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals, only if consistent with safe and sound operations.

(e) *Low-cost education loans provided to low-income borrowers.* In assessing and taking into account the record of a bank under this part, the OCC considers, as a factor, low-cost education loans originated by the bank to borrowers, particularly in its assessment area(s), who have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, "low-cost education loans" means any education loan, as defined in section 140(a)(7) of the Truth in Lending Act (15 U.S.C. 1650(a)(7)) (including a loan under a state or local education loan program), originated by the bank for a student at an "institution of higher education," as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

(f) *Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions.* In assessing and taking into account the record of a nonminority-owned and nonwomen-owned bank under this part, the OCC considers as a factor capital investment, loan participation, and other

ventures undertaken by the bank in cooperation with minority- and women-owned financial institutions and low-income credit unions. Such activities must help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need not also benefit the bank's assessment area(s) or the broader statewide or regional area that includes the bank's assessment area(s).

**§ 25.22 Lending test.**

(a) *Scope of test.* (1) The lending test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through its lending activities by considering a bank's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a bank's business, the OCC will evaluate the bank's consumer lending in one or more of the following categories: motor vehicle, credit card, other secured, and other unsecured loans. In addition, at a bank's option, the OCC will evaluate one or more categories of consumer lending, if the bank has collected and maintained, as required in § 25.42(c)(1), the data for each category that the bank elects to have the OCC evaluate.

(2) The OCC considers originations and purchases of loans. The OCC will also consider any other loan data the bank may choose to provide, including data on loans outstanding, commitments and letters of credit.

(3) A bank may ask the OCC to consider loans originated or purchased by consortia in which the bank participates or by third parties in which the bank has invested only if the loans meet the definition of community development loans and only in accordance with paragraph (d) of this section. The OCC will not consider these loans under any criterion of the lending test except the community development lending criterion.

(b) *Performance criteria.* The OCC evaluates a bank's lending performance pursuant to the following criteria:

(1) *Lending activity.* The number and amount of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, in the bank's assessment area(s);

(2) *Geographic distribution.* The geographic distribution of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on the loan location, including:

(i) The proportion of the bank's lending in the bank's assessment area(s);

(ii) The dispersion of lending in the bank's assessment area(s); and

(iii) The number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the bank's assessment area(s);

(3) *Borrower characteristics.* The distribution, particularly in the bank's assessment

area(s), of the bank's home mortgage, small business, small farm, and consumer loans, if applicable, based on borrower characteristics, including the number and amount of:

(i) Home mortgage loans to low-, moderate-, middle-, and upper-income individuals;

(ii) Small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less;

(iii) Small business and small farm loans by loan amount at origination; and

(iv) Consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals;

(4) *Community development lending.* The bank's community development lending, including the number and amount of community development loans, and their complexity and innovativeness; and

(5) *Innovative or flexible lending practices.* The bank's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies.

(c) *Affiliate lending.* (1) At a bank's option, the OCC will consider loans by an affiliate of the bank, if the bank provides data on the affiliate's loans pursuant to § 25.42.

(2) The OCC considers affiliate lending subject to the following constraints:

(i) No affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase; and

(ii) If a bank elects to have the OCC consider loans within a particular lending category made by one or more of the bank's affiliates in a particular assessment area, the bank shall elect to have the OCC consider, in accordance with paragraph (c)(1) of this section, all the loans within that lending category in that particular assessment area made by all of the bank's affiliates.

(3) The OCC does not consider affiliate lending in assessing a bank's performance under paragraph (b)(2)(i) of this section.

(d) *Lending by a consortium or a third party.* Community development loans originated or purchased by a consortium in which the bank participates or by a third party in which the bank has invested:

(1) Will be considered, at the bank's option, if the bank reports the data pertaining to these loans under § 25.42(b)(2); and

(2) May be allocated among participants or investors, as they choose, for purposes of the lending test, except that no participant or investor:

(i) May claim a loan origination or loan purchase if another participant or investor claims the same loan origination or purchase; or

(ii) May claim loans accounting for more than its percentage share (based on the level of its participation or investment) of the

total loans originated by the consortium or third party.

(e) *Lending performance rating.* The OCC rates a bank's lending performance as provided in appendix A of this part.

**§ 25.23 Investment test.**

(a) *Scope of test.* The investment test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(b) *Exclusion.* Activities considered under the lending or service tests may not be considered under the investment test.

(c) *Affiliate investment.* At a bank's option, the OCC will consider, in its assessment of a bank's investment performance, a qualified investment made by an affiliate of the bank, if the qualified investment is not claimed by any other institution.

(d) *Disposition of branch premises.* Donating, selling on favorable terms, or making available on a rent-free basis a branch of the bank that is located in a predominantly minority neighborhood to a minority depository institution or women's depository institution (as these terms are defined in 12 U.S.C. 2907(b)) will be considered as a qualified investment.

(e) *Performance criteria.* The OCC evaluates the investment performance of a bank pursuant to the following criteria:

- (1) The dollar amount of qualified investments;
- (2) The innovativeness or complexity of qualified investments;
- (3) The responsiveness of qualified investments to credit and community development needs; and
- (4) The degree to which the qualified investments are not routinely provided by private investors.

(f) *Investment performance rating.* The OCC rates a bank's investment performance as provided in appendix A of this part.

**§ 25.24 Service test.**

(a) *Scope of test.* The service test evaluates a bank's record of helping to meet the credit needs of its assessment area(s) by analyzing both the availability and effectiveness of a bank's systems for delivering retail banking services and the extent and innovativeness of its community development services.

(b) *Area(s) benefitted.* Community development services must benefit a bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(c) *Affiliate service.* At a bank's option, the OCC will consider, in its assessment of a bank's service performance, a community development service provided by an affiliate of the bank, if the community development service is not claimed by any other institution.

(d) *Performance criteria—retail banking services.* The OCC evaluates the availability and effectiveness of a bank's systems for delivering retail banking services, pursuant to the following criteria:

(1) The current distribution of the bank's branches among low-, moderate-, middle-, and upper-income geographies;

(2) In the context of its current distribution of the bank's branches, the bank's record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals;

(3) The availability and effectiveness of alternative systems for delivering retail banking services (e.g., ATMs, ATMs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs) in low- and moderate-income geographies and to low- and moderate-income individuals; and

(4) The range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies.

(e) *Performance criteria—community development services.* The OCC evaluates community development services pursuant to the following criteria:

(1) The extent to which the bank provides community development services; and

(2) The innovativeness and responsiveness of community development services.

(f) *Service performance rating.* The OCC rates a bank's service performance as provided in appendix A of this part.

**§ 25.25 Community development test for wholesale or limited purpose banks.**

(a) *Scope of test.* The OCC assesses a wholesale or limited purpose bank's record of helping to meet the credit needs of its assessment area(s) under the community development test through its community development lending, qualified investments, or community development services.

(b) *Designation as a wholesale or limited purpose bank.* In order to receive a designation as a wholesale or limited purpose bank, a bank shall file a request, in writing, with the OCC, at least three months prior to the proposed effective date of the designation. If the OCC approves the designation, it remains in effect until the bank requests revocation of the designation or until one year after the OCC notifies the bank that the OCC has revoked the designation on its own initiative.

(c) *Performance criteria.* The OCC evaluates the community development performance of a wholesale or limited purpose bank pursuant to the following criteria:

- (1) The number and amount of community development loans (including originations and purchases of loans and other community development loan data provided by the bank,

such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services;

(2) The use of innovative or complex qualified investments, community development loans, or community development services and the extent to which the investments are not routinely provided by private investors; and

(3) The bank's responsiveness to credit and community development needs.

(d) *Indirect activities.* At a bank's option, the OCC will consider in its community development performance assessment:

(1) Qualified investments or community development services provided by an affiliate of the bank, if the investments or services are not claimed by any other institution; and

(2) Community development lending by affiliates, consortia and third parties, subject to the requirements and limitations in § 25.22(c) and (d).

(e) *Benefit to assessment area(s)*—(1) Benefit inside assessment area(s). The OCC considers all qualified investments, community development loans, and community development services that benefit areas within the bank's assessment area(s) or a broader statewide or regional area that includes the bank's assessment area(s).

(2) *Benefit outside assessment area(s).* The OCC considers the qualified investments, community development loans, and community development services that benefit areas outside the bank's assessment area(s), if the bank has adequately addressed the needs of its assessment area(s).

(f) *Community development performance rating.* The OCC rates a bank's community development performance as provided in appendix A of this part.

**§ 25.26 Small bank performance standards.**

(a) *Performance criteria*—(1) Small banks that are not intermediate small banks. The OCC evaluates the record of a small bank that is not, or that was not during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

(2) *Intermediate small banks.* The OCC evaluates the record of a small bank that is, or that was during the prior calendar year, an intermediate small bank, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (b) and (c) of this section.

(b) *Lending test.* A small bank's lending performance is evaluated pursuant to the following criteria:

(1) The bank's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary

markets, community development loans, or qualified investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment area(s);

(3) The bank's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the bank's loans; and

(5) The bank's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(c) *Community development test.* An intermediate small bank's community development performance also is evaluated pursuant to the following criteria:

(1) The number and amount of community development loans;

(2) The number and amount of qualified investments;

(3) The extent to which the bank provides community development services; and

(4) The bank's responsiveness through such activities to community development lending, investment, and services needs.

(d) *Small bank performance rating.* The OCC rates the performance of a bank evaluated under this section as provided in appendix A of this part.

**§ 25.27 Strategic plan.**

(a) *Alternative election.* The OCC will assess a bank's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(1) The bank has submitted the plan to the OCC as provided for in this section;

(2) The OCC has approved the plan;

(3) The plan is in effect; and

(4) The bank has been operating under an approved plan for at least one year.

(b) *Data reporting.* The OCC's approval of a plan does not affect the bank's obligation, if any, to report data as required by § 25.42.

(c) *Plans in general*—(1) Term. A plan may have a term of no more than five years, and any multi-year plan must include annual interim measurable goals under which the OCC will evaluate the bank's performance.

(2) *Multiple assessment areas.* A bank with more than one assessment area may prepare a single plan for all of its assessment areas or one or more plans for one or more of its assessment areas.

(3) *Treatment of affiliates.* Affiliated institutions may prepare a joint plan if the plan provides measurable goals for each institution. Activities may be allocated among institutions at the institutions' option, provided that the same activities are not considered for more than one institution.

(d) *Public participation in plan development.* Before submitting a plan to the OCC for approval, a bank shall:

(1) Informally seek suggestions from members of the public in its assessment area(s) covered by the plan while developing the plan;

(2) Once the bank has developed a plan, formally solicit public comment on the plan for at least 30 days by publishing notice in at least one newspaper of general circulation in each assessment area covered by the plan; and

(3) During the period of formal public comment, make copies of the plan available for review by the public at no cost at all offices of the bank in any assessment area covered by the plan and provide copies of the plan upon request for a reasonable fee to cover copying and mailing, if applicable.

(e) *Submission of plan.* The bank shall submit its plan to the OCC at least three months prior to the proposed effective date of the plan. The bank shall also submit with its plan a description of its informal efforts to seek suggestions from members of the public, any written public comment received, and, if the plan was revised in light of the comment received, the initial plan as released for public comment.

(f) *Plan content—(1) Measurable goals.* (i) A bank shall specify in its plan measurable goals for helping to meet the credit needs of each assessment area covered by the plan, particularly the needs of low- and moderate-income geographies and low- and moderate-income individuals, through lending, investment, and services, as appropriate.

(ii) A bank shall address in its plan all three performance categories and, unless the bank has been designated as a wholesale or limited purpose bank, shall emphasize lending and lending-related activities. Nevertheless, a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its assessment area(s), considering public comment and the bank's capacity and constraints, product offerings, and business strategy.

(2) *Confidential information.* A bank may submit additional information to the OCC on a confidential basis, but the goals stated in the plan must be sufficiently specific to enable the public and the OCC to judge the merits of the plan.

(3) *Satisfactory and outstanding goals.* A bank shall specify in its plan measurable goals that constitute "satisfactory" performance. A plan may specify measurable goals that constitute "outstanding" performance. If a bank submits, and the OCC approves, both "satisfactory" and "outstanding" performance goals, the OCC will consider the bank eligible for an "outstanding" performance rating.

(4) *Election if satisfactory goals not substantially met.* A bank may elect in its plan that, if the bank fails to meet substantially its plan goals for a satisfactory rating, the OCC

will evaluate the bank's performance under the lending, investment, and service tests, the community development test, or the small bank performance standards, as appropriate.

(g) *Plan approval—(1) Timing.* The OCC will act upon a plan within 60 calendar days after the OCC receives the complete plan and other material required under paragraph (e) of this section. If the OCC fails to act within this time period, the plan shall be deemed approved unless the OCC extends the review period for good cause.

(2) *Public participation.* In evaluating the plan's goals, the OCC considers the public's involvement in formulating the plan, written public comment on the plan, and any response by the bank to public comment on the plan.

(3) *Criteria for evaluating plan.* The OCC evaluates a plan's measurable goals using the following criteria, as appropriate:

(i) The extent and breadth of lending or lending-related activities, including, as appropriate, the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels, the extent of community development lending, and the use of innovative or flexible lending practices to address credit needs;

(ii) The amount and innovativeness, complexity, and responsiveness of the bank's qualified investments; and

(iii) The availability and effectiveness of the bank's systems for delivering retail banking services and the extent and innovativeness of the bank's community development services.

(h) *Plan amendment.* During the term of a plan, a bank may request the OCC to approve an amendment to the plan on grounds that there has been a material change in circumstances. The bank shall develop an amendment to a previously approved plan in accordance with the public participation requirements of paragraph (d) of this section.

(i) *Plan assessment.* The OCC approves the goals and assesses performance under a plan as provided for in appendix A of this part.

#### **§ 25.28 Assigned ratings.**

(a) *Ratings in general.* Subject to paragraphs (b) and (c) of this section, the OCC assigns to a bank a rating of "outstanding," "satisfactory," "needs to improve," or "substantial noncompliance" based on the bank's performance under the lending, investment and service tests, the community development test, the small bank performance standards, or an approved strategic plan, as applicable.

(b) *Lending, investment, and service tests.* The OCC assigns a rating for a bank assessed under the lending, investment, and service tests in accordance with the following principles:

(1) A bank that receives an “outstanding” rating on the lending test receives an assigned rating of at least “satisfactory”;

(2) A bank that receives an “outstanding” rating on both the service test and the investment test and a rating of at least “high satisfactory” on the lending test receives an assigned rating of “outstanding”; and

(3) No bank may receive an assigned rating of “satisfactory” or higher unless it receives a rating of at least “low satisfactory” on the lending test.

(c) *Effect of evidence of discriminatory or other illegal credit practices.* (1) The OCC’s evaluation of a bank’s CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the bank or in any assessment area by any affiliate whose loans have been considered as part of the bank’s lending performance. In connection with any type of lending activity described in §25.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

(i) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(ii) Violations of the Home Ownership and Equity Protection Act;

(iii) Violations of section 5 of the Federal Trade Commission Act;

(iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and

(v) Violations of the Truth in Lending Act provisions regarding a consumer’s right of rescission.

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the bank’s assigned rating, the OCC considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the bank (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the bank (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

**§ 25.29 Effect of CRA performance on applications.**

(a) *CRA performance.* Among other factors, the OCC takes into account the record of performance under the CRA of each applicant bank in considering an application for:

(1) The establishment of a domestic branch;

(2) The relocation of the main office or a branch;

(3) Under the Bank Merger Act (12 U.S.C. 1828(c)), the merger or consolidation with or the acquisition of assets or assumption of liabilities of an insured depository institution; and

(4) The conversion of an insured depository institution to a national bank charter.

(b) *Charter application.* An applicant (other than an insured depository institution) for a national bank charter shall submit with its application a description of how it will meet its CRA objectives. The OCC takes the description into account in considering the application and may deny or condition approval on that basis.

(c) *Interested parties.* The OCC takes into account any views expressed by interested parties that are submitted in accordance with the OCC’s procedures set forth in part 5 of this chapter in considering CRA performance in an application listed in paragraphs (a) and (b) of this section.

(d) *Denial or conditional approval of application.* A bank’s record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

(e) *Insured depository institution.* For purposes of this section, the term “insured depository institution” has the meaning given to that term in 12 U.S.C. 1813.

SUBPART C—RECORDS, REPORTING, AND DISCLOSURE REQUIREMENTS

**§ 25.41 Assessment area delineation.**

(a) *In general.* A bank shall delineate one or more assessment areas within which the OCC evaluates the bank’s record of helping to meet the credit needs of its community. The OCC does not evaluate the bank’s delineation of its assessment area(s) as a separate performance criterion, but the OCC reviews the delineation for compliance with the requirements of this section.

(b) *Geographic area(s) for wholesale or limited purpose banks.* The assessment area(s) for a wholesale or limited purpose bank must consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the bank has its main office, branches, and deposit-taking ATMs.

(c) *Geographic area(s) for other banks.* The assessment area(s) for a bank other than a wholesale or limited purpose bank must:

(1) Consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns; and

(2) Include the geographies in which the bank has its main office, its branches, and its deposit-taking ATMs, as well as the surrounding geographies in which the bank has originated or purchased a substantial portion of its loans (including home mortgage loans, small business and small farm loans, and any other loans the bank chooses, such

as those consumer loans on which the bank elects to have its performance assessed).

(d) *Adjustments to geographic area(s)*. A bank may adjust the boundaries of its assessment area(s) to include only the portion of a political subdivision that it reasonably can be expected to serve. An adjustment is particularly appropriate in the case of an assessment area that otherwise would be extremely large, of unusual configuration, or divided by significant geographic barriers.

(e) *Limitations on the delineation of an assessment area*. Each bank's assessment area(s):

- (1) Must consist only of whole geographies;
- (2) May not reflect illegal discrimination;
- (3) May not arbitrarily exclude low- or moderate-income geographies, taking into account the bank's size and financial condition; and

(4) May not extend substantially beyond an MSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA. If a bank serves a geographic area that extends substantially beyond a state boundary, the bank shall delineate separate assessment areas for the areas in each state. If a bank serves a geographic area that extends substantially beyond an MSA boundary, the bank shall delineate separate assessment areas for the areas inside and outside the MSA.

(f) Banks serving military personnel. Notwithstanding the requirements of this section, a bank whose business predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area may delineate its entire deposit customer base as its assessment area.

(g) *Use of assessment area(s)*. The OCC uses the assessment area(s) delineated by a bank in its evaluation of the bank's CRA performance unless the OCC determines that the assessment area(s) do not comply with the requirements of this section.

**§ 25.42 Data collection, reporting, and disclosure.**

(a) *Loan information required to be collected and maintained*. A bank, except a small bank, shall collect, and maintain in machine readable form (as prescribed by the OCC) until the completion of its next CRA examination, the following data for each small business or small farm loan originated or purchased by the bank:

- (1) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;
- (2) The loan amount at origination;
- (3) The loan location; and
- (4) An indicator whether the loan was to a business or farm with gross annual revenues of \$1 million or less.

(b) *Loan information required to be reported*. A bank, except a small bank or a bank that was a small bank during the prior calendar

year, shall report annually by March 1 to the OCC in machine readable form (as prescribed by the OCC) the following data for the prior calendar year:

(1) *Small business and small farm loan data*. For each geography in which the bank originated or purchased a small business or small farm loan, the aggregate number and amount of loans:

(i) With an amount at origination of \$100,000 or less;

(ii) With amount at origination of more than \$100,000 but less than or equal to \$250,000;

(iii) With an amount at origination of more than \$250,000; and

(iv) To businesses and farms with gross annual revenues of \$1 million or less (using the revenues that the bank considered in making its credit decision);

(2) *Community development loan data*. The aggregate number and aggregate amount of community development loans originated or purchased; and

(3) *Home mortgage loans*. If the bank is subject to reporting under part 1003 of this title, the location of each home mortgage loan application, origination, or purchase outside the MSAs in which the bank has a home or branch office (or outside any MSA) in accordance with the requirements of part 1003 of this title.

(c) *Optional data collection and maintenance*—(1) Consumer loans. A bank may collect and maintain in machine readable form (as prescribed by the OCC) data for consumer loans originated or purchased by the bank for consideration under the lending test. A bank may maintain data for one or more of the following categories of consumer loans: Motor vehicle, credit card, other secured, and other unsecured. If the bank maintains data for loans in a certain category, it shall maintain data for all loans originated or purchased within that category. The bank shall maintain data separately for each category, including for each loan:

(i) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(ii) The loan amount at origination or purchase;

(iii) The loan location; and

(iv) The gross annual income of the borrower that the bank considered in making its credit decision.

(2) *Other loan data*. At its option, a bank may provide other information concerning its lending performance, including additional loan distribution data.

(d) *Data on affiliate lending*. A bank that elects to have the OCC consider loans by an affiliate, for purposes of the lending or community development test or an approved strategic plan, shall collect, maintain, and report for those loans the data that the bank

would have collected, maintained, and reported pursuant to paragraphs (a), (b), and (c) of this section had the loans been originated or purchased by the bank. For home mortgage loans, the bank shall also be prepared to identify the home mortgage loans reported under part 1003 of this title by the affiliate.

(e) *Data on lending by a consortium or a third party.* A bank that elects to have the OCC consider community development loans by a consortium or third party, for purposes of the lending or community development tests or an approved strategic plan, shall report for those loans the data that the bank would have reported under paragraph (b)(2) of this section had the loans been originated or purchased by the bank.

(f) *Small banks electing evaluation under the lending, investment, and service tests.* A bank that qualifies for evaluation under the small bank performance standards but elects evaluation under the lending, investment, and service tests shall collect, maintain, and report the data required for other banks pursuant to paragraphs (a) and (b) of this section.

(g) *Assessment area data.* A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall collect and report to the OCC by March 1 of each year a list for each assessment area showing the geographies within the area.

(h) *CRA Disclosure Statement.* The OCC prepares annually for each bank that reports data pursuant to this section a CRA Disclosure Statement that contains, on a state-by-state basis:

(1) For each county (and for each assessment area smaller than a county) with a population of 500,000 persons or fewer in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in low-, moderate-, middle-, and upper-income geographies;

(ii) A list grouping each geography according to whether the geography is low-, moderate-, middle-, or upper-income;

(iii) A list showing each geography in which the bank reported a small business or small farm loan; and

(iv) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less;

(2) For each county (and for each assessment area smaller than a county) with a population in excess of 500,000 persons in which the bank reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in geographies with median income relative to the area median income of less than 10 percent, 10 or

more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(ii) A list grouping each geography in the county or assessment area according to whether the median income in the geography relative to the area median income is less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(iii) A list showing each geography in which the bank reported a small business or small farm loan; and

(iv) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less;

(3) The number and amount of small business and small farm loans located inside each assessment area reported by the bank and the number and amount of small business and small farm loans located outside the assessment area(s) reported by the bank; and

(4) The number and amount of community development loans reported as originated or purchased.

(i) *Aggregate disclosure statements.* The OCC, in conjunction with the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation, prepares annually, for each MSA or metropolitan division (including an MSA or metropolitan division that crosses a state boundary) and the nonmetropolitan portion of each state, an aggregate disclosure statement of small business and small farm lending by all institutions subject to reporting under this part or parts 195, 228, or 345 of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the OCC may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of an institution.

(j) *Central data depositories.* The OCC makes the aggregate disclosure statements, described in paragraph (i) of this section, and

the individual bank CRA Disclosure Statements, described in paragraph (h) of this section, available to the public at central data depositories. The OCC publishes a list of the depositories at which the statements are available.

**§25.43 Content and availability of public file.**

(a) *Information available to the public.* A bank shall maintain a public file that includes the following information:

(1) All written comments received from the public for the current year and each of the prior two calendar years that specifically relate to the bank's performance in helping to meet community credit needs, and any response to the comments by the bank, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the bank or publication of which would violate specific provisions of law;

(2) A copy of the public section of the bank's most recent CRA Performance Evaluation prepared by the OCC. The bank shall place this copy in the public file within 30 business days after its receipt from the OCC;

(3) A list of the bank's branches, their street addresses, and geographies;

(4) A list of branches opened or closed by the bank during the current year and each of the prior two calendar years, their street addresses, and geographies;

(5) A list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the bank's branches and descriptions of material differences in the availability or cost of services at particular branches, if any. At its option, a bank may include information regarding the availability of alternative systems for delivering retail banking services (e.g., ATMs, ATMs not owned or operated by or exclusively for the bank, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs);

(6) A map of each assessment area showing the boundaries of the area and identifying the geographies contained within the area, either on the map or in a separate list; and

(7) Any other information the bank chooses.

(b) *Additional information available to the public*—(1) Banks other than small banks. A bank, except a small bank or a bank that was a small bank during the prior calendar year, shall include in its public file the following information pertaining to the bank and its affiliates, if applicable, for each of the prior two calendar years:

(i) If the bank has elected to have one or more categories of its consumer loans considered under the lending test, for each of these categories, the number and amount of loans:

(A) To low-, moderate-, middle-, and upper-income individuals;

(B) Located in low-, moderate-, middle-, and upper-income census tracts; and

(C) Located inside the bank's assessment area(s) and outside the bank's assessment area(s); and

(ii) The bank's CRA Disclosure Statement. The bank shall place the statement in the public file within three business days of its receipt from the OCC.

(2) *Banks required to report Home Mortgage Disclosure Act (HMDA) data.* A bank required to report home mortgage loan data pursuant part 1003 of this title shall include in its public file a written notice that the institution's HMDA Disclosure Statement may be obtained on the Consumer Financial Protection Bureau's (Bureau's) website at [www.consumerfinance.gov/hmda](http://www.consumerfinance.gov/hmda). In addition, a bank that elected to have the OCC consider the mortgage lending of an affiliate shall include in its public file the name of the affiliate and a written notice that the affiliate's HMDA Disclosure Statement may be obtained at the Bureau's website. The bank shall place the written notice(s) in the public file within three business days after receiving notification from the Federal Financial Institutions Examination Council of the availability of the disclosure statement(s).

(3) *Small banks.* A small bank or a bank that was a small bank during the prior calendar year shall include in its public file:

(i) The bank's loan-to-deposit ratio for each quarter of the prior calendar

year and, at its option, additional data on its loan-to-deposit ratio; and

(ii) The information required for other banks by paragraph (b)(1) of this section, if the bank has elected to be evaluated under the lending, investment, and service tests.

(4) *Banks with strategic plans.* A bank that has been approved to be assessed under a strategic plan shall include in its public file a copy of that plan. A bank need not include information submitted to the OCC on a confidential basis in conjunction with the plan.

(5) *Banks with less than satisfactory ratings.* A bank that received a less than satisfactory rating during its most recent examination shall include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The bank shall update the description quarterly.

(c) *Location of public information.* A bank shall make available to the public for inspection upon request and at no cost the information required in this section as follows:

(1) At the main office and, if an interstate bank, at one branch office in each state, all information in the public file; and

(2) At each branch:

(i) A copy of the public section of the bank's most recent CRA Performance Evaluation and a list of services provided by the branch; and

(ii) Within five calendar days of the request, all the information in the public file relating to the assessment area in which the branch is located.

(d) *Copies.* Upon request, a bank shall provide copies, either on paper or in another form acceptable to the person making the request, of the information in its public file. The bank may charge a reasonable fee not to exceed the cost of copying and mailing (if applicable).

(e) *Updating.* Except as otherwise provided in this section, a bank shall ensure that the information required by this section is current as of April 1 of each year.

**§ 25.44 Public notice by banks.**

A bank shall provide in the public lobby of its main office and each of its branches the appropriate public notice set forth in appendix B of this part.

Only a branch of a bank having more than one assessment area shall include the bracketed material in the notice for branch offices. Only a bank that is an affiliate of a holding company shall include the next to the last sentence of the notices. A bank shall include the last sentence of the notices only if it is an affiliate of a holding company that is not prevented by statute from acquiring additional banks.

**§ 25.45 Publication of planned examination schedule.**

The OCC publishes at least 30 days in advance of the beginning of each calendar quarter a list of banks scheduled for CRA examinations in that quarter.

SUBPART D [RESERVED]

SUBPART E—PROHIBITION AGAINST USE OF INTERSTATE BRANCHES PRIMARILY FOR DEPOSIT PRODUCTION

**§ 25.61 Purpose and scope.**

(a) *Purpose.* The purpose of this subpart is to implement section 109 (12 U.S.C. 1835a) of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act).

(b) *Scope.* (1) This subpart applies to any national bank that has operated a covered interstate branch for a period of at least one year, and any foreign bank that has operated a covered interstate branch that is a Federal branch for a period of at least one year.

(2) This subpart describes the requirements imposed under 12 U.S.C. 1835a, which requires the appropriate Federal banking agencies (the OCC, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation) to prescribe uniform rules that prohibit a bank from using any authority to engage in interstate branching pursuant to the Interstate Act, or any amendment made by the Interstate Act to any other provision of law, primarily for the purpose of deposit production.

**§ 25.62 Definitions.**

For purposes of this subpart, the following definitions apply:

(a) *Bank* means, unless the context indicates otherwise:

(1) A national bank; and

(2) A foreign bank as that term is defined in 12 U.S.C. 3101(7) and 12 CFR 28.11(j).

(b) *Covered interstate branch* means:

(1) Any branch of a national bank, and any Federal branch of a foreign bank, that:

(i) Is established or acquired outside the bank's home State pursuant to the interstate branching authority granted by the Interstate Act or by any amendment made by the Interstate Act to any other provision of law; or

(ii) Could not have been established or acquired outside of the bank's home State but for the establishment or acquisition of a branch described in paragraph (b)(1)(i) of this section; and

(2) Any bank or branch of a bank controlled by an out-of-State bank holding company.

(c) *Federal branch* means Federal branch as that term is defined in 12 U.S.C. 3101(6) and 12 CFR 28.11(i).

(d) *Home State* means:

(1) With respect to a State bank, the State that chartered the bank;

(2) With respect to a national bank, the State in which the main office of the bank is located;

(3) With respect to a bank holding company, the State in which the total deposits of all banking subsidiaries of such company are the largest on the later of:

(i) July 1, 1966; or

(ii) The date on which the company becomes a bank holding company under the Bank Holding Company Act;

(4) With respect to a foreign bank:

(i) For purposes of determining whether a U.S. branch of a foreign bank is a covered interstate branch, the home State of the foreign bank as determined in accordance with 12 U.S.C. 3103(c) and 12 CFR 28.11(o); and

(ii) For purposes of determining whether a branch of a U.S. bank controlled by a foreign bank is a covered interstate branch, the State in which the total deposits of all banking subsidiaries of such foreign bank are the largest on the later of:

(A) July 1, 1966; or

(B) The date on which the foreign bank becomes a bank holding company under the Bank Holding Company Act.

(e) *Host State* means a State in which a covered interstate branch is established or acquired.

(f) *Host state loan-to-deposit ratio* generally means, with respect to a par-

ticular host state, the ratio of total loans in the host state relative to total deposits from the host state for all banks (including institutions covered under the definition of "bank" in 12 U.S.C. 1813(a)(1)) that have that state as their home state, as determined and updated periodically by the appropriate Federal banking agencies and made available to the public.

(g) *Out-of-State bank holding company* means, with respect to any State, a bank holding company whose home State is another State.

(h) *State* means state as that term is defined in 12 U.S.C. 1813(a)(3).

(i) *Statewide loan-to-deposit ratio* means, with respect to a bank, the ratio of the bank's loans to its deposits in a state in which the bank has one or more covered interstate branches, as determined by the OCC.

**§ 25.63 Loan-to-deposit ratio screen.**

(a) *Application of screen.* Beginning no earlier than one year after a covered interstate branch is acquired or established, the OCC will consider whether the bank's statewide loan-to-deposit ratio is less than 50 percent of the relevant host State loan-to-deposit ratio.

(b) *Results of screen.* (1) If the OCC determines that the bank's statewide loan-to-deposit ratio is 50 percent or more of the host state loan-to-deposit ratio, no further consideration under this subpart is required.

(2) If the OCC determines that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, or if reasonably available data are insufficient to calculate the bank's statewide loan-to-deposit ratio, the OCC will make a credit needs determination for the bank as provided in § 25.64.

**§ 25.64 Credit needs determination.**

(a) *In general.* The OCC will review the loan portfolio of the bank and determine whether the bank is reasonably helping to meet the credit needs of the communities in the host state that are served by the bank.

(b) *Guidelines.* The OCC will use the following considerations as guidelines when making the determination pursuant to paragraph (a) of this section:

(1) Whether covered interstate branches were formerly part of a failed or failing depository institution;

(2) Whether covered interstate branches were acquired under circumstances where there was a low loan-to-deposit ratio because of the nature of the acquired institution's business or loan portfolio;

(3) Whether covered interstate branches have a high concentration of commercial or credit card lending, trust services, or other specialized activities, including the extent to which the covered interstate branches accept deposits in the host state;

(4) The CRA ratings received by the bank, if any;

(5) Economic conditions, including the level of loan demand, within the communities served by the covered interstate branches;

(6) The safe and sound operation and condition of the bank; and

(7) The OCC's CRA regulations (subparts A through D of this part) and interpretations of those regulations.

**§ 25.65 Sanctions.**

(a) *In general.* If the OCC determines that a bank is not reasonably helping to meet the credit needs of the communities served by the bank in the host state, and that the bank's statewide loan-to-deposit ratio is less than 50 percent of the host state loan-to-deposit ratio, the OCC:

(1) May order that a bank's covered interstate branch or branches be closed unless the bank provides reasonable assurances to the satisfaction of the OCC, after an opportunity for public comment, that the bank has an acceptable plan under which the bank will reasonably help to meet the credit needs of the communities served by the bank in the host state; and

(2) Will not permit the bank to open a new branch in the host state that would be considered to be a covered interstate branch unless the bank provides reasonable assurances to the satisfaction of the OCC, after an opportunity for public comment, that the bank will reasonably help to meet the credit needs of the community that the new branch will serve.

(b) *Notice prior to closure of a covered interstate branch.* Before exercising the OCC's authority to order the bank to close a covered interstate branch, the OCC will issue to the bank a notice of the OCC's intent to order the closure

and will schedule a hearing within 60 days of issuing the notice.

(c) *Hearing.* The OCC will conduct a hearing scheduled under paragraph (b) of this section in accordance with the provisions of 12 U.S.C. 1818(h) and 12 CFR part 19.

APPENDIX A TO PART 25—RATINGS

(a) *Ratings in general.* (1) In assigning a rating, the OCC evaluates a bank's performance under the applicable performance criteria in this part, in accordance with §§ 25.21 and 25.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

(2) A bank's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The bank's overall performance, however, must be consistent with safe and sound banking practices and generally with the appropriate rating profile as follows.

(b) Banks evaluated under the lending, investment, and service tests—(1) Lending performance rating. The OCC assigns each bank's lending performance one of the five following ratings.

(i) *Outstanding.* The OCC rates a bank's lending performance "outstanding" if, in general, it demonstrates:

(A) Excellent responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A substantial majority of its loans are made in its assessment area(s);

(C) An excellent geographic distribution of loans in its assessment area(s);

(D) An excellent distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) An excellent record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of \$1 million or less, consistent with safe and sound operations;

(F) Extensive use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It is a leader in making community development loans.

(ii) *High satisfactory.* The OCC rates a bank's lending performance "high satisfactory" if, in general, it demonstrates:

(A) Good responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A high percentage of its loans are made in its assessment area(s);

(C) A good geographic distribution of loans in its assessment area(s);

(D) A good distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) A good record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of \$1 million or less, consistent with safe and sound operations;

(F) Use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a relatively high level of community development loans.

(iii) *Low satisfactory.* The OCC rates a bank's lending performance "low satisfactory" if, in general, it demonstrates:

(A) Adequate responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) An adequate percentage of its loans are made in its assessment area(s);

(C) An adequate geographic distribution of loans in its assessment area(s);

(D) An adequate distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) An adequate record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of \$1 million or less, consistent with safe and sound operations;

(F) Limited use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made an adequate level of community development loans.

(iv) *Needs to improve.* The OCC rates a bank's lending performance "needs to improve" if, in general, it demonstrates:

(A) Poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A small percentage of its loans are made in its assessment area(s);

(C) A poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);

(D) A poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) A poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of \$1 million or less, consistent with safe and sound operations;

(F) Little use of innovative or flexible lending practices in a safe and sound manner to address the credit

needs of low- or moderate-income individuals or geographies; and

(G) It has made a low level of community development loans.

(v) **Substantial noncompliance.** The OCC rates a bank's lending performance as being in "substantial noncompliance" if, in general, it demonstrates:

(A) A very poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A very small percentage of its loans are made in its assessment area(s);

(C) A very poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);

(D) A very poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the bank;

(E) A very poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of \$1 million or less, consistent with safe and sound operations;

(F) No use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made few, if any, community development loans.

(2) **Investment performance rating.** The OCC assigns each bank's investment performance one of the five following ratings.

(i) **Outstanding.** The OCC rates a bank's investment performance "outstanding" if, in general, it demonstrates:

(A) An excellent level of qualified investments, particularly those that are not routinely provided by private investors, often in a leadership position;

(B) Extensive use of innovative or complex qualified investments; and

(C) Excellent responsiveness to credit and community development needs.

(ii) **High satisfactory.** The OCC rates a bank's investment performance "high satisfactory" if, in general, it demonstrates:

(A) A significant level of qualified investments, particularly those that are not routinely provided by private investors, occasionally in a leadership position;

(B) Significant use of innovative or complex qualified investments; and

(C) Good responsiveness to credit and community development needs.

(iii) **Low satisfactory.** The OCC rates a bank's investment performance "low satisfactory" if, in general, it demonstrates:

(A) An adequate level of qualified investments, particularly those that are not routinely provided by private investors, although rarely in a leadership position;

(B) Occasional use of innovative or complex qualified investments; and

(C) Adequate responsiveness to credit and community development needs.

(iv) **Needs to improve.** The OCC rates a bank's investment performance "needs to improve" if, in general, it demonstrates:

(A) A poor level of qualified investments, particularly those that are not routinely provided by private investors;

(B) Rare use of innovative or complex qualified investments; and

(C) Poor responsiveness to credit and community development needs.

(v) **Substantial noncompliance.** The OCC rates a bank's investment performance as being in "substantial noncompliance" if, in general, it demonstrates:

(A) Few, if any, qualified investments, particularly those that are not routinely provided by private investors;

(B) No use of innovative or complex qualified investments; and

(C) Very poor responsiveness to credit and community development needs.

(3) **Service performance rating.** The OCC assigns each bank's service performance one of the five following ratings.

(i) **Outstanding.** The OCC rates a bank's service performance "outstanding" if, in general, the bank demonstrates:

(A) Its service delivery systems are readily accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has improved the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) are tailored to the convenience and needs of its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It is a leader in providing community development services.

(ii) *High satisfactory.* The OCC rates a bank's service performance "high satisfactory" if, in general, the bank demonstrates:

(A) Its service delivery systems are accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides a relatively high level of community development services.

(iii) *Low satisfactory.* The OCC rates a bank's service performance "low satisfactory" if, in general, the bank demonstrates:

(A) Its service delivery systems are reasonably accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has generally not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Its services (including, where appropriate, business hours) do not vary

in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides an adequate level of community development services.

(iv) *Needs to improve.* The OCC rates a bank's service performance "needs to improve" if, in general, the bank demonstrates:

(A) Its service delivery systems are unreasonably inaccessible to portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

(B) To the extent changes have been made, its record of opening and closing branches has adversely affected the accessibility its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) vary in a way that inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides a limited level of community development services.

(v) *Substantial noncompliance.* The OCC rates a bank's service performance as being in "substantial noncompliance" if, in general, the bank demonstrates:

(A) Its service delivery systems are unreasonably inaccessible to significant portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

(B) To the extent changes have been made, its record of opening and closing branches has significantly adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) vary in a way that significantly inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides few, if any, community development services.

(c) *Wholesale or limited purpose banks.* The OCC assigns each wholesale or limited purpose bank's community development performance one of the four following ratings.

(1) *Outstanding.* The OCC rates a wholesale or limited purpose bank's community development performance "outstanding" if, in general, it demonstrates:

(i) A high level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Extensive use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Excellent responsiveness to credit and community development needs in its assessment area(s).

(2) *Satisfactory.* The OCC rates a wholesale or limited purpose bank's community development performance "satisfactory" if, in general, it demonstrates:

(i) An adequate level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Occasional use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Adequate responsiveness to credit and community development needs in its assessment area(s).

(3) *Needs to improve.* The OCC rates a wholesale or limited purpose bank's community development performance as "needs to improve" if, in general, it demonstrates:

(i) A poor level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Rare use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Poor responsiveness to credit and community development needs in its assessment area(s).

(4) *Substantial noncompliance.* The OCC rates a wholesale or limited pur-

pose bank's community development performance in "substantial noncompliance" if, in general, it demonstrates:

(i) Few, if any, community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) No use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Very poor responsiveness to credit and community development needs in its assessment area(s).

(d) *Banks evaluated under the small bank performance standards—(1) Lending test ratings.* (i) *Eligibility for a satisfactory lending test rating.* The OCC rates a small bank's lending performance "satisfactory" if, in general, the bank demonstrates:

(A) A reasonable loan-to-deposit ratio (considering seasonal variations) given the bank's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, other lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;

(B) A majority of its loans and, as appropriate, other lending-related activities, are in its assessment area;

(C) A distribution of loans to and, as appropriate, other lending-related activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the bank's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the bank's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the bank's assessment area(s).

(ii) *Eligibility for an "outstanding" lending test rating.* A small bank that meets each of the standards for a "satisfactory" rating under this paragraph

and exceeds some or all of those standards may warrant consideration for a lending test rating of “outstanding.”

(iii) *Needs to improve or substantial noncompliance ratings.* A small bank may also receive a lending test rating of “needs to improve” or “substantial noncompliance” depending on the degree to which its performance has failed to meet the standard for a “satisfactory” rating.

(2) *Community development test ratings for intermediate small banks*—(i) *Eligibility for a satisfactory community development test rating.* The OCC rates an intermediate small bank’s community development performance “satisfactory” if the bank demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the bank’s response will depend on its capacity for such community development activities, its assessment area’s need for such community development activities, and the availability of such opportunities for community development in the bank’s assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The OCC rates an intermediate small bank’s community development performance “outstanding” if the bank demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the bank’s capacity and the need and availability of such opportunities for community development in the bank’s assessment area(s).

(iii) *Needs to improve or substantial noncompliance ratings.* An intermediate small bank may also receive a community development test rating of “needs to improve” or “substantial noncompliance” depending on the degree to which its performance has failed to meet the standards for a “satisfactory” rating.

(3) *Overall rating*—(i) *Eligibility for a satisfactory overall rating.* No intermediate small bank may receive an assigned overall rating of “satisfactory”

unless it receives a rating of at least “satisfactory” on both the lending test and the community development test.

(ii) *Eligibility for an outstanding overall rating.* (A) An intermediate small bank that receives an “outstanding” rating on one test and at least “satisfactory” on the other test may receive an assigned overall rating of “outstanding.”

(B) A small bank that is not an intermediate small bank that meets each of the standards for a “satisfactory” rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of “outstanding.” In assessing whether a bank’s performance is “outstanding,” the OCC considers the extent to which the bank exceeds each of the performance standards for a “satisfactory” rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(iii) *Needs to improve or substantial noncompliance overall ratings.* A small bank may also receive a rating of “needs to improve” or “substantial noncompliance” depending on the degree to which its performance has failed to meet the standards for a “satisfactory” rating.

(e) *Strategic plan assessment and rating*—(1) *Satisfactory goals.* The OCC approves as “satisfactory” measurable goals that adequately help to meet the credit needs of the bank’s assessment area(s).

(2) *Outstanding goals.* If the plan identifies a separate group of measurable goals that substantially exceed the levels approved as “satisfactory,” the OCC will approve those goals as “outstanding.”

(3) *Rating.* The OCC assesses the performance of a bank operating under an approved plan to determine if the bank has met its plan goals:

(i) If the bank substantially achieves its plan goals for a satisfactory rating, the OCC will rate the bank’s performance under the plan as “satisfactory.”

(ii) If the bank exceeds its plan goals for a satisfactory rating and substantially achieves its plan goals for an outstanding rating, the OCC will rate

the bank's performance under the plan as "outstanding."

(iii) If the bank fails to meet substantially its plan goals for a satisfactory rating, the OCC will rate the bank as either "needs to improve" or "substantial noncompliance," depending on the extent to which it falls short of its plan goals, unless the bank elected in its plan to be rated otherwise, as provided in § 25.27(f)(4).

#### APPENDIX B TO PART 25—CRA NOTICE

(a) *Notice for main offices and, if an interstate bank, one branch office in each state.*

##### *Community Reinvestment Act Notice*

Under the Federal Community Reinvestment Act (CRA), the Comptroller of the Currency evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The Comptroller also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA, including, for example, information about our branches, such as their location and services provided at them; the public section of our most recent CRA Performance Evaluation, prepared by the Comptroller; and comments received from the public relating to our performance in helping to meet community credit needs, as well as our responses to those comments. You may review this information today.

At least 30 days before the beginning of each quarter, the Comptroller publishes a nationwide list of the banks that are scheduled for CRA examination in that quarter. This list is available from the Deputy Comptroller (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and Deputy Comptroller (address). Your letter, together with any response by us, will be considered by the Comptroller in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Deputy Com-

troller. You may also request from the Deputy Comptroller an announcement of our applications covered by the CRA filed with the Comptroller. We are an affiliate of (name of holding company), a bank holding company. You may request from the (title of responsible official), Federal Reserve Bank of \_\_\_\_\_ (address) an announcement of applications covered by the CRA filed by bank holding companies.

(b) *Notice for branch offices.*

##### *Community Reinvestment Act Notice*

Under the Federal Community Reinvestment Act (CRA), the Comptroller of the Currency evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The Comptroller also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA. You may review today the public section of our most recent CRA evaluation, prepared by the Comptroller, and a list of services provided at this branch. You may also have access to the following additional information, which we will make available to you at this branch within five calendar days after you make a request to us: (1) A map showing the assessment area containing this branch, which is the area in which the Comptroller evaluates our CRA performance in this community; (2) information about our branches in this assessment area; (3) a list of services we provide at those locations; (4) data on our lending performance in this assessment area; and (5) copies of all written comments received by us that specifically relate to our CRA performance in this assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

[If you would like to review information about our CRA performance in other communities served by us, the public file for our entire bank is available at (name of office located in state), located at (address).]

At least 30 days before the beginning of each quarter, the Comptroller publishes a nationwide list of the banks that are scheduled for CRA examination in that quarter. This list is available from the Deputy Comptroller (address). You may send written comments about our performance in helping to meet community credit needs to (name and address of official at bank) and Deputy Comptroller (address). Your letter, together with any response by us, will be considered by the Comptroller in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the Deputy Comptroller. You may also request from the Deputy Comptroller an announcement of our applications covered by the CRA filed with the Comptroller. We are an affiliate of (name of holding company), a bank holding company. You may request from the (title of responsible official), Federal Reserve Bank of \_\_\_\_\_ (address) an announcement of applications covered by the CRA filed by bank holding companies

#### PART 195—COMMUNITY REINVESTMENT

##### SUBPART A—GENERAL

#### § 195.11 Authority, purposes, and scope.

(a) *Authority.* This part is issued under the Community Reinvestment Act of 1977 (CRA), as amended (12 U.S.C. 2901 *et seq.*); section 5, as amended, and sections 3, and 4, as added, of the Home Owners' Loan Act of 1933 (12 U.S.C. 1462a, 1463, and 1464); and sections 4, 6, and 18(c), as amended of the Federal Deposit Insurance Act (12 U.S.C. 1814, 1816, 1828(c)).

(b) *Purposes.* In enacting the CRA, the Congress required each appropriate Federal financial supervisory agency to assess an institution's record of helping to meet the credit needs of the local communities in which the institution is chartered, consistent with the safe and sound operation of the institution, and to take this record into account in the agency's evaluation of an application for a deposit facility by the institution. This part is intended to carry out the purposes of the CRA by:

(1) Establishing the framework and criteria by which the appropriate Federal banking agency assesses a savings association's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the savings association; and

(2) Providing that the appropriate Federal banking agency takes that record into account in considering certain applications.

(c) *Scope*—(1) General. This part applies to all savings associations except as provided in paragraph (c)(2) of this section.

(2) *Certain special purpose savings associations.* This part does not apply to special purpose savings associations that do not perform commercial or retail banking services by granting credit to the public in the ordinary course of business, other than as incident to their specialized operations. These associations include banker's banks, as defined in 12 U.S.C. 24 (Seventh), and associations that engage only in one or more of the following activities: Providing cash management controlled disbursement services or serving as correspondent associations, trust companies, or clearing agents.

#### § 195.12 Definitions.

For purposes of this part, the following definitions apply:

(a) *Affiliate* means any company that controls, is controlled by, or is under common control with another company. The term "control" has the meaning given to that term in 12 U.S.C. 1841(a)(2), and a company is under common control with another company if both companies are directly or indirectly controlled by the same company.

(b) *Area median income* means:

(1) The median family income for the MSA, if a person or geography is located in an MSA, or for the metropolitan division, if a person or geography is located in an MSA that has been subdivided into metropolitan divisions; or

(2) The statewide nonmetropolitan median family income, if a person or geography is located outside an MSA.

(c) *Assessment area* means a geographic area delineated in accordance with § 195.41.

(d) *Automated teller machine (ATM)* means an automated, unstaffed banking facility owned or operated by, or operated exclusively for, the savings association at which deposits are received, cash dispersed, or money lent.

(e) [Reserved]

(f) *Branch* means a staffed banking facility authorized as a branch, whether shared or unshared, including, for example, a mini-branch in a grocery store or a branch operated in conjunction with any other local business or nonprofit organization.

(g) *Community development* means:

(1) Affordable housing (including multifamily rental housing) for low or moderate-income individuals;

(2) Community services targeted to low- or moderate-income individuals;

(3) Activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company or Small Business Investment Company programs (13 CFR 121.301) or have gross annual revenues of \$1 million or less; or

(4) Activities that revitalize or stabilize—

(i) Low- or moderate-income geographies;

(ii) Designated disaster areas; or

(iii) Distressed or underserved, non-metropolitan middle-income geographies designated by the appropriate Federal banking agency based on—

(A) Rates of poverty, unemployment, and population loss; or

(B) Population size, density, and dispersion. Activities revitalize and stabilize geographies designated based on population size, density, and dispersion if they help to meet essential community needs, including needs of low- and moderate-income individuals.

(h) *Community development loan* means a loan that:

(1) Has as its primary purpose community development; and

(2) Except in the case of a wholesale or limited purpose savings association:

(i) Has not been reported or collected by the savings association or an affiliate for consideration in the savings association's assessment as a home mortgage, small business, small farm, or consumer loan, unless the loan is for a

multifamily dwelling (as defined in §1003.2(n) of this title); and

(ii) Benefits the savings association's assessment area(s) or a broader statewide or regional area that includes the savings association's assessment area(s).

(i) *Community development service* means a service that:

(1) Has as its primary purpose community development;

(2) Is related to the provision of financial services; and

(3) Has not been considered in the evaluation of the savings association's retail banking services under §195.24(d).

(j) *Consumer loan* means a loan to one or more individuals for household, family, or other personal expenditures. A consumer loan does not include a home mortgage, small business, or small farm loan. Consumer loans include the following categories of loans:

(1) Motor vehicle loan, which is a consumer loan extended for the purchase of and secured by a motor vehicle;

(2) Credit card loan, which is a line of credit for household, family, or other personal expenditures that is accessed by a borrower's use of a "credit card," as this term is defined in §1026.2 of this title;

(3) Other secured consumer loan, which is a secured consumer loan that is not included in one of the other categories of consumer loans; and

(4) Other unsecured consumer loan, which is an unsecured consumer loan that is not included in one of the other categories of consumer loans.

(k) *Geography* means a census tract delineated by the United States Bureau of the Census in the most recent decennial census.

(l) *Home mortgage loan* means a closed-end mortgage loan or an open-end line of credit as these terms are defined under §1003.2 of this title and that is not an excluded transaction under §1003.3(c)(1) through (10) and (13) of this title.

(m) *Income level* includes:

(1) Low-income, which means an individual income that is less than 50 percent of the area median income or a median family income that is less than 50 percent in the case of a geography.

(2) Moderate-income, which means an individual income that is at least 50 percent and less than 80 percent of the area median income or a median family income that is at least 50 and less than 80 percent in the case of a geography.

(3) Middle-income, which means an individual income that is at least 80 percent and less than 120 percent of the area median income or a median family income that is at least 80 and less than 120 percent in the case of a geography.

(4) Upper-income, which means an individual income that is 120 percent or more of the area median income or a median family income that is 120 percent or more in the case of a geography.

(n) *Limited purpose savings association* means a savings association that offers only a narrow product line (such as credit card or motor vehicle loans) to a regional or broader market and for which a designation as a limited purpose savings association is in effect, in accordance with § 195.25(b).

(o) *Loan location*. A loan is located as follows:

(1) A consumer loan is located in the geography where the borrower resides;

(2) A home mortgage loan is located in the geography where the property to which the loan relates is located; and

(3) A small business or small farm loan is located in the geography where the main business facility or farm is located or where the loan proceeds otherwise will be applied, as indicated by the borrower.

(p) *Loan production office* means a staffed facility, other than a branch, that is open to the public and that provides lending-related services, such as loan information and applications.

(q) *Metropolitan division* means a metropolitan division as defined by the Director of the Office of Management and Budget.

(r) *MSA* means a metropolitan statistical area as defined by the Director of the Office of Management and Budget.

(s) *Nonmetropolitan area* means any area that is not located in an MSA.

(t) *Qualified investment* means a lawful investment, deposit, membership share, or grant that has as its primary purpose community development.

(u) *Small savings association*—(1) Definition. Small savings association means a savings association that, as of December 31 of either of the prior two calendar years, had assets of less than \$1.305 billion. Intermediate small savings association means a small savings association with assets of at least \$326 million as of December 31 of both of the prior two calendar years and less than \$1.305 billion as of December 31 of either of the prior two calendar years.

(2) *Adjustment*. The dollar figures in paragraph (u)(1) of this section shall be adjusted annually and published by the OCC based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each twelve-month period ending in November, with rounding to the nearest million.

(v) *Small business loan* means a loan included in “loans to small businesses” as defined in the instructions for preparation of the Thrift Financial Report (TFR) or Consolidated Reports of Condition and Income (Call Report), as appropriate.

(w) *Small farm loan* means a loan included in “loans to small farms” as defined in the instructions for preparation of the TFR or Call Report, as appropriate.

(x) *Wholesale savings association* means a savings association that is not in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers, and for which a designation as a wholesale savings association is in effect, in accordance with § 195.25(b).

#### SUBPART B—STANDARDS FOR ASSESSING PERFORMANCE

##### § 195.21 Performance tests, standards, and ratings, in general.

(a) *Performance tests and standards*. The appropriate Federal banking agency assesses the CRA performance of a savings association in an examination as follows:

(1) *Lending, investment, and service tests*. The appropriate Federal banking agency applies the lending, investment, and service tests, as provided in §§ 195.22 through 195.24, in evaluating

the performance of a savings association, except as provided in paragraphs (a)(2), (a)(3), and (a)(4) of this section.

(2) *Community development test for wholesale or limited purpose savings associations.* The appropriate Federal banking agency applies the community development test for a wholesale or limited purpose savings association, as provided in §195.25, except as provided in paragraph (a)(4) of this section.

(3) *Small savings association performance standards.* The appropriate Federal banking agency applies the small savings association performance standards as provided in §195.26 in evaluating the performance of a small savings association or a savings association that was a small savings association during the prior calendar year, unless the savings association elects to be assessed as provided in paragraphs (a)(1), (a)(2), or (a)(4) of this section. The savings association may elect to be assessed as provided in paragraph (a)(1) of this section only if it collects and reports the data required for other savings associations under §195.42.

(4) *Strategic plan.* The appropriate Federal banking agency evaluates the performance of a savings association under a strategic plan if the savings association submits, and the appropriate Federal banking agency approves, a strategic plan as provided in §195.27.

(b) *Performance context.* The appropriate Federal banking agency applies the tests and standards in paragraph (a) of this section and also considers whether to approve a proposed strategic plan in the context of:

(1) Demographic data on median income levels, distribution of household income, nature of housing stock, housing costs, and other relevant data pertaining to a savings association's assessment area(s);

(2) Any information about lending, investment, and service opportunities in the savings association's assessment area(s) maintained by the savings association or obtained from community organizations, state, local, and tribal governments, economic development agencies, or other sources;

(3) The savings association's product offerings and business strategy as determined from data provided by the savings association;

(4) Institutional capacity and constraints, including the size and financial condition of the savings association, the economic climate (national, regional, and local), safety and soundness limitations, and any other factors that significantly affect the savings association's ability to provide lending, investments, or services in its assessment area(s);

(5) The savings association's past performance and the performance of similarly situated lenders;

(6) The savings association's public file, as described in §195.43, and any written comments about the savings association's CRA performance submitted to the savings association or the appropriate Federal banking agency; and

(7) Any other information deemed relevant by the appropriate Federal banking agency.

(c) *Assigned ratings.* The appropriate Federal banking agency assigns to a savings association one of the following four ratings pursuant to §195.28 and appendix A of this part: "outstanding"; "satisfactory"; "needs to improve"; or "substantial noncompliance," as provided in 12 U.S.C. 2906(b)(2). The rating assigned by the appropriate Federal banking agency reflects the savings association's record of helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, consistent with the safe and sound operation of the savings association.

(d) *Safe and sound operations.* This part and the CRA do not require a savings association to make loans or investments or to provide services that are inconsistent with safe and sound operations. To the contrary, the appropriate Federal banking agency anticipates savings associations can meet the standards of this part with safe and sound loans, investments, and services on which the savings associations expect to make a profit. Savings associations are permitted and encouraged to develop and apply flexible underwriting standards for loans that benefit low- or moderate-income geographies or individuals, only if consistent with safe and sound operations.

(e) *Low-cost education loans provided to low-income borrowers.* In assessing

and taking into account the record of a savings association under this part, the appropriate Federal banking agency considers, as a factor, low-cost education loans originated by the savings association to borrowers, particularly in its assessment area(s), who have an individual income that is less than 50 percent of the area median income. For purposes of this paragraph, "low-cost education loans" means any education loan, as defined in section 140(a)(7) of the Truth in Lending Act (15 U.S.C. 1650(a)(7)) (including a loan under a state or local education loan program), originated by the savings association for a student at an "institution of higher education," as that term is generally defined in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002) and the implementing regulations published by the U.S. Department of Education, with interest rates and fees no greater than those of comparable education loans offered directly by the U.S. Department of Education. Such rates and fees are specified in section 455 of the Higher Education Act of 1965 (20 U.S.C. 1087e).

(f) *Activities in cooperation with minority- or women-owned financial institutions and low-income credit unions.* In assessing and taking into account the record of a nonminority-owned and nonwomen-owned savings association under this part, the appropriate Federal banking agency considers as a factor capital investment, loan participation, and other ventures undertaken by the savings association in cooperation with minority- and women-owned financial institutions and low-income credit unions. Such activities must help meet the credit needs of local communities in which the minority- and women-owned financial institutions and low-income credit unions are chartered. To be considered, such activities need not also benefit the savings association's assessment area(s) or the broader statewide or regional area that includes the savings association's assessment area(s).

**§ 195.22 Lending test.**

(a) *Scope of test.* (1) The lending test evaluates a savings association's record of helping to meet the credit needs of its assessment area(s) through

its lending activities by considering a savings association's home mortgage, small business, small farm, and community development lending. If consumer lending constitutes a substantial majority of a savings association's business, the appropriate Federal banking agency will evaluate the savings association's consumer lending in one or more of the following categories: Motor vehicle, credit card, other secured, and other unsecured loans. In addition, at a savings association's option, the appropriate Federal banking agency will evaluate one or more categories of consumer lending, if the savings association has collected and maintained, as required in § 195.42(c)(1), the data for each category that the savings association elects to have the appropriate Federal banking agency evaluate.

(2) The appropriate Federal banking agency considers originations and purchases of loans. The appropriate Federal banking agency will also consider any other loan data the savings association may choose to provide, including data on loans outstanding, commitments and letters of credit.

(3) A savings association may ask the appropriate Federal banking agency to consider loans originated or purchased by consortia in which the savings association participates or by third parties in which the savings association has invested only if the loans meet the definition of community development loans and only in accordance with paragraph (d) of this section. The appropriate Federal banking agency will not consider these loans under any criterion of the lending test except the community development lending criterion.

(b) *Performance criteria.* The appropriate Federal banking agency evaluates a savings association's lending performance pursuant to the following criteria:

(1) *Lending activity.* The number and amount of the savings association's home mortgage, small business, small farm, and consumer loans, if applicable, in the savings association's assessment area(s);

(2) *Geographic distribution.* The geographic distribution of the savings association's home mortgage, small business, small farm, and consumer loans, if applicable, based on the loan location, including:

(i) The proportion of the savings association's lending in the savings association's assessment area(s);

(ii) The dispersion of lending in the savings association's assessment area(s); and

(iii) The number and amount of loans in low-, moderate-, middle-, and upper-income geographies in the savings association's assessment area(s);

(3) *Borrower characteristics.* The distribution, particularly in the savings association's assessment area(s), of the savings association's home mortgage, small business, small farm, and consumer loans, if applicable, based on borrower characteristics, including the number and amount of:

(i) Home mortgage loans to low-, moderate-, middle-, and upper-income individuals;

(ii) Small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less;

(iii) Small business and small farm loans by loan amount at origination; and

(iv) Consumer loans, if applicable, to low-, moderate-, middle-, and upper-income individuals;

(4) *Community development lending.* The savings association's community development lending, including the number and amount of community development loans, and their complexity and innovativeness; and

(5) *Innovative or flexible lending practices.* The savings association's use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies.

(c) *Affiliate lending.* (1) At a savings association's option, the appropriate Federal banking agency will consider loans by an affiliate of the savings association, if the savings association provides data on the affiliate's loans pursuant to §195.42.

(2) The appropriate Federal banking agency considers affiliate lending subject to the following constraints:

(i) No affiliate may claim a loan origination or loan purchase if another institution claims the same loan origination or purchase; and

(ii) If a savings association elects to have the appropriate Federal banking agency consider loans within a particular lending category made by one or more of the savings association's affiliates in a particular assessment area, the savings association shall elect to have the appropriate Federal banking agency consider, in accordance with paragraph (c)(1) of this section, all the loans within that lending category in that particular assessment area made by all of the savings association's affiliates.

(3) The appropriate Federal banking agency does not consider affiliate lending in assessing a savings association's performance under paragraph (b)(2)(i) of this section.

(d) *Lending by a consortium or a third party.* Community development loans originated or purchased by a consortium in which the savings association participates or by a third party in which the savings association has invested:

(1) Will be considered, at the savings association's option, if the savings association reports the data pertaining to these loans under §195.42(b)(2); and

(2) May be allocated among participants or investors, as they choose, for purposes of the lending test, except that no participant or investor:

(i) May claim a loan origination or loan purchase if another participant or investor claims the same loan origination or purchase; or

(ii) May claim loans accounting for more than its percentage share (based on the level of its participation or investment) of the total loans originated by the consortium or third party.

(e) *Lending performance rating.* The appropriate Federal banking agency rates a savings association's lending performance as provided in appendix A of this part.

**§195.23 Investment test.**

(a) *Scope of test.* The investment test evaluates a savings association's record of helping to meet the credit needs of its assessment area(s) through qualified investments that benefit its

assessment area(s) or a broader statewide or regional area that includes the savings association's assessment area(s).

(b) *Exclusion.* Activities considered under the lending or service tests may not be considered under the investment test.

(c) *Affiliate investment.* At a savings association's option, the appropriate Federal banking agency will consider, in its assessment of a savings association's investment performance, a qualified investment made by an affiliate of the savings association, if the qualified investment is not claimed by any other institution.

(d) *Disposition of branch premises.* Donating, selling on favorable terms, or making available on a rent-free basis a branch of the savings association that is located in a predominantly minority neighborhood to a minority depository institution or women's depository institution (as these terms are defined in 12 U.S.C. 2907(b)) will be considered as a qualified investment.

(e) *Performance criteria.* The appropriate Federal banking agency evaluates the investment performance of a savings association pursuant to the following criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

(3) The responsiveness of qualified investments to credit and community development needs; and

(4) The degree to which the qualified investments are not routinely provided by private investors.

(f) *Investment performance rating.* The appropriate Federal banking agency rates a savings association's investment performance as provided in appendix A of this part.

**§ 195.24 Service test.**

(a) *Scope of test.* The service test evaluates a savings association's record of helping to meet the credit needs of its assessment area(s) by analyzing both the availability and effectiveness of a savings association's systems for delivering retail banking services and the extent and innovativeness of its community development services.

(b) *Area(s) benefitted.* Community development services must benefit a sav-

ings association's assessment area(s) or a broader statewide or regional area that includes the savings association's assessment area(s).

(c) *Affiliate service.* At a savings association's option, the appropriate Federal banking agency will consider, in its assessment of a savings association's service performance, a community development service provided by an affiliate of the savings association, if the community development service is not claimed by any other institution.

(d) *Performance criteria—retail banking services.* The appropriate Federal banking agency evaluates the availability and effectiveness of a savings association's systems for delivering retail banking services, pursuant to the following criteria:

(1) The current distribution of the savings association's branches among low-, moderate-, middle-, and upper-income geographies;

(2) In the context of its current distribution of the savings association's branches, the savings association's record of opening and closing branches, particularly branches located in low- or moderate-income geographies or primarily serving low- or moderate-income individuals;

(3) The availability and effectiveness of alternative systems for delivering retail banking services (*e.g.*, ATMs, ATMs not owned or operated by or exclusively for the savings association, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs) in low- and moderate-income geographies and to low- and moderate-income individuals; and

(4) The range of services provided in low-, moderate-, middle-, and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies.

(e) *Performance criteria—community development services.* The appropriate Federal banking agency evaluates community development services pursuant to the following criteria:

(1) The extent to which the savings association provides community development services; and

(2) The innovativeness and responsiveness of community development services.

(f) *Service performance rating.* The appropriate Federal banking agency rates a savings association's service performance as provided in appendix A of this part.

**§195.25 Community development test for wholesale or limited purpose savings associations.**

(a) *Scope of test.* The appropriate Federal banking agency assesses a wholesale or limited purpose savings association's record of helping to meet the credit needs of its assessment area(s) under the community development test through its community development lending, qualified investments, or community development services.

(b) *Designation as a wholesale or limited purpose savings association.* In order to receive a designation as a wholesale or limited purpose savings association, a savings association shall file a request, in writing, with the appropriate Federal banking agency, at least three months prior to the proposed effective date of the designation. If the appropriate Federal banking agency approves the designation, it remains in effect until the savings association requests revocation of the designation or until one year after the appropriate Federal banking agency notifies the savings association that the appropriate Federal banking agency has revoked the designation on its own initiative.

(c) *Performance criteria.* The appropriate Federal banking agency evaluates the community development performance of a wholesale or limited purpose savings association pursuant to the following criteria:

(1) The number and amount of community development loans (including originations and purchases of loans and other community development loan data provided by the savings association, such as data on loans outstanding, commitments, and letters of credit), qualified investments, or community development services;

(2) The use of innovative or complex qualified investments, community development loans, or community development services and the extent to which the investments are not rou-

tinely provided by private investors; and

(3) The savings association's responsiveness to credit and community development needs.

(d) *Indirect activities.* At a savings association's option, the appropriate Federal banking agency will consider in its community development performance assessment:

(1) Qualified investments or community development services provided by an affiliate of the savings association, if the investments or services are not claimed by any other institution; and

(2) Community development lending by affiliates, consortia and third parties, subject to the requirements and limitations in §195.22(c) and (d).

(e) *Benefit to assessment area(s)*—(1) Benefit inside assessment area(s). The appropriate Federal banking agency considers all qualified investments, community development loans, and community development services that benefit areas within the savings association's assessment area(s) or a broader statewide or regional area that includes the savings association's assessment area(s).

(2) *Benefit outside assessment area(s).* The appropriate Federal banking agency considers the qualified investments, community development loans, and community development services that benefit areas outside the savings association's assessment area(s), if the savings association has adequately addressed the needs of its assessment area(s).

(f) *Community development performance rating.* The appropriate Federal banking agency rates a savings association's community development performance as provided in appendix A of this part.

**§195.26 Small savings association performance standards.**

(a) *Performance criteria*—(1) *Small savings associations that are not intermediate small savings associations.* The appropriate Federal banking agency evaluates the record of a small savings association that is not, or that was not during the prior calendar year, an intermediate small savings association, of helping to meet the credit needs of its

assessment area(s) pursuant to the criteria set forth in paragraph (b) of this section.

(2) *Intermediate small savings associations.* The appropriate Federal banking agency evaluates the record of a small savings association that is, or that was during the prior calendar year, an intermediate small savings association, of helping to meet the credit needs of its assessment area(s) pursuant to the criteria set forth in paragraphs (b) and (c) of this section.

(b) *Lending test.* A small savings association's lending performance is evaluated pursuant to the following criteria:

(1) The savings association's loan-to-deposit ratio, adjusted for seasonal variation, and, as appropriate, other lending-related activities, such as loan originations for sale to the secondary markets, community development loans, or qualified investments;

(2) The percentage of loans and, as appropriate, other lending-related activities located in the savings association's assessment area(s);

(3) The savings association's record of lending to and, as appropriate, engaging in other lending-related activities for borrowers of different income levels and businesses and farms of different sizes;

(4) The geographic distribution of the savings association's loans; and

(5) The savings association's record of taking action, if warranted, in response to written complaints about its performance in helping to meet credit needs in its assessment area(s).

(c) *Community development test.* An intermediate small savings association's community development performance also is evaluated pursuant to the following criteria:

(1) The number and amount of community development loans;

(2) The number and amount of qualified investments;

(3) The extent to which the savings association provides community development services; and

(4) The savings association's responsiveness through such activities to community development lending, investment, and services needs.

(d) *Small savings association performance rating.* The appropriate Federal banking agency rates the performance

of a savings association evaluated under this section as provided in appendix A of this part.

#### **§ 195.27 Strategic plan.**

(a) *Alternative election.* The appropriate Federal banking agency will assess a savings association's record of helping to meet the credit needs of its assessment area(s) under a strategic plan if:

(1) The savings association has submitted the plan to the appropriate Federal banking agency as provided for in this section;

(2) The appropriate Federal banking agency has approved the plan;

(3) The plan is in effect; and

(4) The savings association has been operating under an approved plan for at least one year.

(b) *Data reporting.* The appropriate Federal banking agency's approval of a plan does not affect the savings association's obligation, if any, to report data as required by § 195.42.

(c) *Plans in general—(1) Term.* A plan may have a term of no more than five years, and any multi-year plan must include annual interim measurable goals under which the appropriate Federal banking agency will evaluate the savings association's performance.

(2) *Multiple assessment areas.* A savings association with more than one assessment area may prepare a single plan for all of its assessment areas or one or more plans for one or more of its assessment areas.

(3) *Treatment of affiliates.* Affiliated institutions may prepare a joint plan if the plan provides measurable goals for each institution. Activities may be allocated among institutions at the institutions' option, provided that the same activities are not considered for more than one institution.

(d) *Public participation in plan development.* Before submitting a plan to the appropriate Federal banking agency for approval, a savings association shall:

(1) Informally seek suggestions from members of the public in its assessment area(s) covered by the plan while developing the plan;

(2) Once the savings association has developed a plan, formally solicit public comment on the plan for at least 30 days by publishing notice in at least

one newspaper of general circulation in each assessment area covered by the plan; and

(3) During the period of formal public comment, make copies of the plan available for review by the public at no cost at all offices of the savings association in any assessment area covered by the plan and provide copies of the plan upon request for a reasonable fee to cover copying and mailing, if applicable.

(e) *Submission of plan.* The savings association shall submit its plan to the appropriate Federal banking agency at least three months prior to the proposed effective date of the plan. The savings association shall also submit with its plan a description of its informal efforts to seek suggestions from members of the public, any written public comment received, and, if the plan was revised in light of the comment received, the initial plan as released for public comment.

(f) *Plan content—(1) Measurable goals.* (i) A savings association shall specify in its plan measurable goals for helping to meet the credit needs of each assessment area covered by the plan, particularly the needs of low- and moderate-income geographies and low- and moderate-income individuals, through lending, investment, and services, as appropriate.

(ii) A savings association shall address in its plan all three performance categories and, unless the savings association has been designated as a wholesale or limited purpose savings association, shall emphasize lending and lending-related activities. Nevertheless, a different emphasis, including a focus on one or more performance categories, may be appropriate if responsive to the characteristics and credit needs of its assessment area(s), considering public comment and the savings association's capacity and constraints, product offerings, and business strategy.

(2) *Confidential information.* A savings association may submit additional information to the appropriate Federal banking agency on a confidential basis, but the goals stated in the plan must be sufficiently specific to enable the public and the appropriate Federal banking agency to judge the merits of the plan.

(3) *Satisfactory and outstanding goals.* A savings association shall specify in its plan measurable goals that constitute "satisfactory" performance. A plan may specify measurable goals that constitute "outstanding" performance. If a savings association submits, and the appropriate Federal banking agency approves, both "satisfactory" and "outstanding" performance goals, the appropriate Federal banking agency will consider the savings association eligible for an "outstanding" performance rating.

(4) *Election if satisfactory goals not substantially met.* A savings association may elect in its plan that, if the savings association fails to meet substantially its plan goals for a satisfactory rating, the appropriate Federal banking agency will evaluate the savings association's performance under the lending, investment, and service tests, the community development test, or the small savings association performance standards, as appropriate.

(g) *Plan approval—(1) Timing.* The appropriate Federal banking agency will act upon a plan within 60 calendar days after it receives the complete plan and other material required under paragraph (e) of this section. If the appropriate Federal banking agency fails to act within this time period, the plan shall be deemed approved unless the appropriate Federal banking agency extends the review period for good cause.

(2) *Public participation.* In evaluating the plan's goals, the appropriate Federal banking agency considers the public's involvement in formulating the plan, written public comment on the plan, and any response by the savings association to public comment on the plan.

(3) *Criteria for evaluating plan.* The appropriate Federal banking agency evaluates a plan's measurable goals using the following criteria, as appropriate:

(i) The extent and breadth of lending or lending-related activities, including, as appropriate, the distribution of loans among different geographies, businesses and farms of different sizes, and individuals of different income levels, the extent of community development lending, and the use of innovative

or flexible lending practices to address credit needs;

(ii) The amount and innovativeness, complexity, and responsiveness of the savings association's qualified investments; and

(iii) The availability and effectiveness of the savings association's systems for delivering retail banking services and the extent and innovativeness of the savings association's community development services.

(h) *Plan amendment.* During the term of a plan, a savings association may request the appropriate Federal banking agency to approve an amendment to the plan on grounds that there has been a material change in circumstances. The savings association shall develop an amendment to a previously approved plan in accordance with the public participation requirements of paragraph (d) of this section.

(i) *Plan assessment.* The appropriate Federal banking agency approves the goals and assesses performance under a plan as provided for in appendix A of this part.

**§ 195.28 Assigned ratings.**

(a) *Ratings in general.* Subject to paragraphs (b) and (c) of this section, the appropriate Federal banking agency assigns to a savings association a rating of "outstanding," "satisfactory," "needs to improve," or "substantial noncompliance" based on the savings association's performance under the lending, investment and service tests, the community development test, the small savings association performance standards, or an approved strategic plan, as applicable.

(b) *Lending, investment, and service tests.* The appropriate Federal banking agency assigns a rating for a savings association assessed under the lending, investment, and service tests in accordance with the following principles:

(1) A savings association that receives an "outstanding" rating on the lending test receives an assigned rating of at least "satisfactory";

(2) A savings association that receives an "outstanding" rating on both the service test and the investment test and a rating of at least "high satisfactory" on the lending test receives an assigned rating of "outstanding"; and

(3) No savings association may receive an assigned rating of "satisfactory" or higher unless it receives a rating of at least "low satisfactory" on the lending test.

(c) *Effect of evidence of discriminatory or other illegal credit practices.* (1) The appropriate Federal banking agency's evaluation of a savings association's CRA performance is adversely affected by evidence of discriminatory or other illegal credit practices in any geography by the savings association or in any assessment area by any affiliate whose loans have been considered as part of the savings association's lending performance. In connection with any type of lending activity described in § 195.22(a), evidence of discriminatory or other credit practices that violate an applicable law, rule, or regulation includes, but is not limited to:

(i) Discrimination against applicants on a prohibited basis in violation, for example, of the Equal Credit Opportunity Act or the Fair Housing Act;

(ii) Violations of the Home Ownership and Equity Protection Act;

(iii) Violations of section 5 of the Federal Trade Commission Act;

(iv) Violations of section 8 of the Real Estate Settlement Procedures Act; and

(v) Violations of the Truth in Lending Act provisions regarding a consumer's right of rescission.

(2) In determining the effect of evidence of practices described in paragraph (c)(1) of this section on the savings association's assigned rating, the appropriate Federal banking agency considers the nature, extent, and strength of the evidence of the practices; the policies and procedures that the savings association (or affiliate, as applicable) has in place to prevent the practices; any corrective action that the savings association (or affiliate, as applicable) has taken or has committed to take, including voluntary corrective action resulting from self-assessment; and any other relevant information.

**§ 195.29 Effect of CRA performance on applications.**

(a) *CRA performance.* Among other factors, the appropriate Federal banking agency takes into account the record of performance under the CRA of each applicant savings association,

and for applications under section 10(e) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)), of each proposed subsidiary savings association, in considering an application for:

- (1) The establishment of a domestic branch or other facility that would be authorized to take deposits;
- (2) The relocation of the main office or a branch;
- (3) The merger or consolidation with or the acquisition of the assets or assumption of the liabilities of an insured depository institution requiring appropriate Federal banking agency approval under the Bank Merger Act (12 U.S.C. 1828(c));
- (4) A Federal thrift charter; and
- (5) Acquisitions subject to section 10(e) of the Home Owners' Loan Act (12 U.S.C. 1467a(e)).

(b) *Charter application.* An applicant for a Federal thrift charter shall submit with its application a description of how it will meet its CRA objectives. The appropriate Federal banking agency takes the description into account in considering the application and may deny or condition approval on that basis.

(c) *Interested parties.* The appropriate Federal banking agency takes into account any views expressed by interested parties that are submitted in accordance with the applicable comment procedures in considering CRA performance in an application listed in paragraphs (a) and (b) of this section.

(d) *Denial or conditional approval of application.* A savings association's record of performance may be the basis for denying or conditioning approval of an application listed in paragraph (a) of this section.

(e) *Insured depository institution.* For purposes of this section, the term "insured depository institution" has the meaning given to that term in 12 U.S.C. 1813.

SUBPART C—RECORDS, REPORTING, AND DISCLOSURE REQUIREMENTS

**§ 195.41 Assessment area delineation.**

(a) *In general.* A savings association shall delineate one or more assessment areas within which the appropriate Federal banking agency evaluates the savings association's record of helping to meet the credit needs of its commu-

nity. The appropriate Federal banking agency does not evaluate the savings association's delineation of its assessment area(s) as a separate performance criterion, but the appropriate Federal banking agency reviews the delineation for compliance with the requirements of this section.

(b) *Geographic area(s) for wholesale or limited purpose savings associations.* The assessment area(s) for a wholesale or limited purpose savings association must consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns, in which the savings association has its main office, branches, and deposit-taking ATMs.

(c) *Geographic area(s) for other savings associations.* The assessment area(s) for a savings association other than a wholesale or limited purpose savings association must:

(1) Consist generally of one or more MSAs or metropolitan divisions (using the MSA or metropolitan division boundaries that were in effect as of January 1 of the calendar year in which the delineation is made) or one or more contiguous political subdivisions, such as counties, cities, or towns; and

(2) Include the geographies in which the savings association has its main office, its branches, and its deposit-taking ATMs, as well as the surrounding geographies in which the savings association has originated or purchased a substantial portion of its loans (including home mortgage loans, small business and small farm loans, and any other loans the savings association chooses, such as those consumer loans on which the savings association elects to have its performance assessed).

(d) *Adjustments to geographic area(s).* A savings association may adjust the boundaries of its assessment area(s) to include only the portion of a political subdivision that it reasonably can be expected to serve. An adjustment is particularly appropriate in the case of an assessment area that otherwise would be extremely large, of unusual

configuration, or divided by significant geographic barriers.

(e) *Limitations on the delineation of an assessment area. Each savings association's assessment area(s):*

(1) Must consist only of whole geographies;

(2) May not reflect illegal discrimination;

(3) May not arbitrarily exclude low- or moderate-income geographies, taking into account the savings association's size and financial condition; and

(4) May not extend substantially beyond an MSA boundary or beyond a state boundary unless the assessment area is located in a multistate MSA. If a savings association serves a geographic area that extends substantially beyond a state boundary, the savings association shall delineate separate assessment areas for the areas in each state. If a savings association serves a geographic area that extends substantially beyond an MSA boundary, the savings association shall delineate separate assessment areas for the areas inside and outside the MSA.

(f) *Savings associations serving military personnel.* Notwithstanding the requirements of this section, a savings association whose business predominantly consists of serving the needs of military personnel or their dependents who are not located within a defined geographic area may delineate its entire deposit customer base as its assessment area.

(g) *Use of assessment area(s).* The appropriate Federal banking agency uses the assessment area(s) delineated by a savings association in its evaluation of the savings association's CRA performance unless the appropriate Federal banking agency determines that the assessment area(s) do not comply with the requirements of this section.

**§ 195.42 Data collection, reporting, and disclosure.**

(a) *Loan information required to be collected and maintained.* A savings association, except a small savings association, shall collect, and maintain in machine readable form (as prescribed by the appropriate Federal banking agency) until the completion of its next CRA examination, the following data for each small business or small farm

loan originated or purchased by the savings association:

(1) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;

(2) The loan amount at origination;

(3) The loan location; and

(4) An indicator whether the loan was to a business or farm with gross annual revenues of \$1 million or less.

(b) *Loan information required to be reported.* A savings association, except a small savings association or a savings association that was a small savings association during the prior calendar year, shall report annually by March 1 to the appropriate Federal banking agency in machine readable form (as prescribed by the agency) the following data for the prior calendar year:

(1) *Small business and small farm loan data.* For each geography in which the savings association originated or purchased a small business or small farm loan, the aggregate number and amount of loans:

(i) With an amount at origination of \$100,000 or less;

(ii) With amount at origination of more than \$100,000 but less than or equal to \$250,000;

(iii) With an amount at origination of more than \$250,000; and

(iv) To businesses and farms with gross annual revenues of \$1 million or less (using the revenues that the savings association considered in making its credit decision);

(2) *Community development loan data.* The aggregate number and aggregate amount of community development loans originated or purchased; and

(3) *Home mortgage loans.* If the savings association is subject to reporting under part 1003 of this title, the location of each home mortgage loan application, origination, or purchase outside the MSAs in which the savings association has a home or branch office (or outside any MSA) in accordance with the requirements of part 1003 of this title.

(c) *Optional data collection and maintenance—(1) Consumer loans.* A savings association may collect and maintain in machine readable form (as prescribed by the appropriate Federal banking

agency) data for consumer loans originated or purchased by the savings association for consideration under the lending test. A savings association may maintain data for one or more of the following categories of consumer loans: Motor vehicle, credit card, other secured, and other unsecured. If the savings association maintains data for loans in a certain category, it shall maintain data for all loans originated or purchased within that category. The savings association shall maintain data separately for each category, including for each loan:

- (i) A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;
- (ii) The loan amount at origination or purchase;
- (iii) The loan location; and
- (iv) The gross annual income of the borrower that the savings association considered in making its credit decision.

(2) *Other loan data.* At its option, a savings association may provide other information concerning its lending performance, including additional loan distribution data.

(d) *Data on affiliate lending.* A savings association that elects to have the appropriate Federal banking agency consider loans by an affiliate, for purposes of the lending or community development test or an approved strategic plan, shall collect, maintain, and report for those loans the data that the savings association would have collected, maintained, and reported pursuant to paragraphs (a), (b), and (c) of this section had the loans been originated or purchased by the savings association. For home mortgage loans, the savings association shall also be prepared to identify the home mortgage loans reported under part 1003 of this title by the affiliate.

(e) *Data on lending by a consortium or a third-party.* A savings association that elects to have the appropriate Federal banking agency consider community development loans by a consortium or third party, for purposes of the lending or community development tests or an approved strategic plan, shall report for those loans the data that the savings association would have reported under paragraph (b)(2) of

this section had the loans been originated or purchased by the savings association.

(f) *Small savings associations electing evaluation under the lending, investment, and service tests.* A savings association that qualifies for evaluation under the small savings association performance standards but elects evaluation under the lending, investment, and service tests shall collect, maintain, and report the data required for other savings associations pursuant to paragraphs (a) and (b) of this section.

(g) *Assessment area data.* A savings association, except a small savings association or a savings association that was a small savings association during the prior calendar year, shall collect and report to the appropriate Federal banking agency by March 1 of each year a list for each assessment area showing the geographies within the area.

(h) *CRA Disclosure Statement.* The appropriate Federal banking agency prepares annually for each savings association that reports data pursuant to this section a CRA Disclosure Statement that contains, on a state-by-state basis:

(1) For each county (and for each assessment area smaller than a county) with a population of 500,000 persons or fewer in which the savings association reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in low-, moderate-, middle-, and upper-income geographies;

(ii) A list grouping each geography according to whether the geography is low-, moderate-, middle-, or upper-income;

(iii) A list showing each geography in which the savings association reported a small business or small farm loan; and

(iv) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less;

(2) For each county (and for each assessment area smaller than a county) with a population in excess of 500,000

persons in which the savings association reported a small business or small farm loan:

(i) The number and amount of small business and small farm loans reported as originated or purchased located in geographies with median income relative to the area median income of less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(ii) A list grouping each geography in the county or assessment area according to whether the median income in the geography relative to the area median income is less than 10 percent, 10 or more but less than 20 percent, 20 or more but less than 30 percent, 30 or more but less than 40 percent, 40 or more but less than 50 percent, 50 or more but less than 60 percent, 60 or more but less than 70 percent, 70 or more but less than 80 percent, 80 or more but less than 90 percent, 90 or more but less than 100 percent, 100 or more but less than 110 percent, 110 or more but less than 120 percent, and 120 percent or more;

(iii) A list showing each geography in which the savings association reported a small business or small farm loan; and

(iv) The number and amount of small business and small farm loans to businesses and farms with gross annual revenues of \$1 million or less;

(3) The number and amount of small business and small farm loans located inside each assessment area reported by the savings association and the number and amount of small business and small farm loans located outside the assessment area(s) reported by the savings association; and

(4) The number and amount of community development loans reported as originated or purchased.

(i) *Aggregate disclosure statements.* The appropriate Federal banking agency, in

conjunction with the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation or the OCC, as appropriate, prepares annually, for each MSA or metropolitan division (including an MSA or metropolitan division that crosses a state boundary) and the non-metropolitan portion of each state, an aggregate disclosure statement of small business and small farm lending by all institutions subject to reporting under this part or parts 25, 228, or 345 of this title. These disclosure statements indicate, for each geography, the number and amount of all small business and small farm loans originated or purchased by reporting institutions, except that the appropriate Federal banking agency may adjust the form of the disclosure if necessary, because of special circumstances, to protect the privacy of a borrower or the competitive position of an institution.

(j) *Central data depositories.* The appropriate Federal banking agency makes the aggregate disclosure statements, described in paragraph (i) of this section, and the individual savings association CRA Disclosure Statements, described in paragraph (h) of this section, available to the public at central data depositories. The appropriate Federal banking agency publishes a list of the depositories at which the statements are available.

**§ 195.43 Content and availability of public file.**

(a) *Information available to the public.* A savings association shall maintain a public file that includes the following information:

(1) All written comments received from the public for the current year and each of the prior two calendar years that specifically relate to the savings association's performance in helping to meet community credit needs, and any response to the comments by the savings association, if neither the comments nor the responses contain statements that reflect adversely on the good name or reputation of any persons other than the savings association or publication of which would violate specific provisions of law;

(2) A copy of the public section of the savings association's most recent CRA

Performance Evaluation prepared by the appropriate Federal banking agency. The savings association shall place this copy in the public file within 30 business days after its receipt from the appropriate Federal banking agency;

(3) A list of the savings association's branches, their street addresses, and geographies;

(4) A list of branches opened or closed by the savings association during the current year and each of the prior two calendar years, their street addresses, and geographies;

(5) A list of services (including hours of operation, available loan and deposit products, and transaction fees) generally offered at the savings association's branches and descriptions of material differences in the availability or cost of services at particular branches, if any. At its option, a savings association may include information regarding the availability of alternative systems for delivering retail banking services (e.g., ATMs, ATMs not owned or operated by or exclusively for the savings association, banking by telephone or computer, loan production offices, and bank-at-work or bank-by-mail programs);

(6) A map of each assessment area showing the boundaries of the area and identifying the geographies contained within the area, either on the map or in a separate list; and

(7) Any other information the savings association chooses.

(b) *Additional information available to the public*—(1) *Savings associations other than small savings associations*. A savings association, except a small savings association or a savings association that was a small savings association during the prior calendar year, shall include in its public file the following information pertaining to the savings association and its affiliates, if applicable, for each of the prior two calendar years:

(i) If the savings association has elected to have one or more categories of its consumer loans considered under the lending test, for each of these categories, the number and amount of loans:

(A) To low-, moderate-, middle-, and upper-income individuals;

(B) Located in low-, moderate-, middle-, and upper-income census tracts; and

(C) Located inside the savings association's assessment area(s) and outside the savings association's assessment area(s); and

(ii) The savings association's CRA Disclosure Statement. The savings association shall place the statement in the public file within three business days of its receipt from the appropriate Federal banking agency.

(2) *Savings associations required to report Home Mortgage Disclosure Act (HMDA) data*. A savings association required to report home mortgage loan data pursuant part 1003 of this title shall include in its public file a written notice that the institution's HMDA Disclosure Statement may be obtained on the Consumer Financial Protection Bureau's (Bureau's) website at [www.consumerfinance.gov/hmda](http://www.consumerfinance.gov/hmda). In addition, a savings association that elected to have the appropriate Federal banking agency consider the mortgage lending of an affiliate shall include in its public file the name of the affiliate and a written notice that the affiliate's HMDA Disclosure Statement may be obtained at the Bureau's website. The savings association shall place the written notice(s) in the public file within three business days after receiving notification from the Federal Financial Institutions Examination Council of the availability of the disclosure statement(s).

(3) *Small savings associations*. A small savings association or a savings association that was a small savings association during the prior calendar year shall include in its public file:

(i) The savings association's loan-to-deposit ratio for each quarter of the prior calendar year and, at its option, additional data on its loan-to-deposit ratio; and

(ii) The information required for other savings associations by paragraph (b)(1) of this section, if the savings association has elected to be evaluated under the lending, investment, and service tests.

(4) *Savings associations with strategic plans*. A savings association that has been approved to be assessed under a

strategic plan shall include in its public file a copy of that plan. A savings association need not include information submitted to the appropriate Federal banking agency on a confidential basis in conjunction with the plan.

(5) *Savings associations with less than satisfactory ratings.* A savings association that received a less than satisfactory rating during its most recent examination shall include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The savings association shall update the description quarterly.

(c) *Location of public information.* A savings association shall make available to the public for inspection upon request and at no cost the information required in this section as follows:

(1) At the main office and, if an interstate savings association, at one branch office in each state, all information in the public file; and

(2) At each branch:

(i) A copy of the public section of the savings association's most recent CRA Performance Evaluation and a list of services provided by the branch; and

(ii) Within five calendar days of the request, all the information in the public file relating to the assessment area in which the branch is located.

(d) *Copies.* Upon request, a savings association shall provide copies, either on paper or in another form acceptable to the person making the request, of the information in its public file. The savings association may charge a reasonable fee not to exceed the cost of copying and mailing (if applicable).

(e) *Updating.* Except as otherwise provided in this section, a savings association shall ensure that the information required by this section is current as of April 1 of each year.

**§195.44 Public notice by savings associations.**

A savings association shall provide in the public lobby of its main office and each of its branches the appropriate public notice set forth in appendix B of this part. Only a branch of a savings association having more than one assessment area shall include the bracketed material in the notice for branch offices. Only a savings association that is an affiliate of a holding company

shall include the last two sentences of the notices.

**§195.45 Publication of planned examination schedule.**

The appropriate Federal banking agency publishes at least 30 days in advance of the beginning of each calendar quarter a list of savings associations scheduled for CRA examinations in that quarter.

APPENDIX A TO PART 195—RATINGS

(a) *Ratings in general.* (1) In assigning a rating, the appropriate Federal banking agency evaluates a savings association's performance under the applicable performance criteria in this part, in accordance with §§195.21 and 195.28. This includes consideration of low-cost education loans provided to low-income borrowers and activities in cooperation with minority- or women-owned financial institutions and low-income credit unions, as well as adjustments on the basis of evidence of discriminatory or other illegal credit practices.

(2) A savings association's performance need not fit each aspect of a particular rating profile in order to receive that rating, and exceptionally strong performance with respect to some aspects may compensate for weak performance in others. The savings association's overall performance, however, must be consistent with safe and sound banking practices and generally with the appropriate rating profile as follows.

(b) *Savings associations evaluated under the lending, investment, and service tests—*(1) *Lending performance rating.* The appropriate Federal banking agency assigns each savings association's lending performance one of the five following ratings.

(i) *Outstanding.* The appropriate Federal banking agency rates a savings association's lending performance "outstanding" if, in general, it demonstrates:

(A) Excellent responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A substantial majority of its loans are made in its assessment area(s);

(C) An excellent geographic distribution of loans in its assessment area(s);

(D) An excellent distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the savings association;

(E) An excellent record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of \$1 million or less, consistent with safe and sound operations;

(F) Extensive use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It is a leader in making community development loans.

(ii) *High satisfactory.* The appropriate Federal banking agency rates a savings association's lending performance "high satisfactory" if, in general, it demonstrates:

(A) Good responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A high percentage of its loans are made in its assessment area(s);

(C) A good geographic distribution of loans in its assessment area(s);

(D) A good distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the savings association;

(E) A good record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of \$1 million or less, consistent with safe and sound operations;

(F) Use of innovative or flexible lending practices in a safe and sound man-

ner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a relatively high level of community development loans.

(iii) *Low satisfactory.* The appropriate Federal banking agency rates a savings association's lending performance "low satisfactory" if, in general, it demonstrates:

(A) Adequate responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) An adequate percentage of its loans are made in its assessment area(s);

(C) An adequate geographic distribution of loans in its assessment area(s);

(D) An adequate distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the savings association;

(E) An adequate record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of \$1 million or less, consistent with safe and sound operations;

(F) Limited use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made an adequate level of community development loans.

(iv) *Needs to improve.* The appropriate Federal banking agency rates a savings association's lending performance "needs to improve" if, in general, it demonstrates:

(A) Poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A small percentage of its loans are made in its assessment area(s);

(C) A poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);

(D) A poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the savings association;

(E) A poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of \$1 million or less, consistent with safe and sound operations;

(F) Little use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made a low level of community development loans.

(v) *Substantial noncompliance.* The appropriate Federal banking agency rates a savings association's lending performance as being in "substantial non-compliance" if, in general, it demonstrates:

(A) A very poor responsiveness to credit needs in its assessment area(s), taking into account the number and amount of home mortgage, small business, small farm, and consumer loans, if applicable, in its assessment area(s);

(B) A very small percentage of its loans are made in its assessment area(s);

(C) A very poor geographic distribution of loans, particularly to low- or moderate-income geographies, in its assessment area(s);

(D) A very poor distribution, particularly in its assessment area(s), of loans among individuals of different income levels and businesses (including farms) of different sizes, given the product lines offered by the savings association;

(E) A very poor record of serving the credit needs of highly economically disadvantaged areas in its assessment area(s), low-income individuals, or businesses (including farms) with gross annual revenues of \$1 million or less,

consistent with safe and sound operations;

(F) No use of innovative or flexible lending practices in a safe and sound manner to address the credit needs of low- or moderate-income individuals or geographies; and

(G) It has made few, if any, community development loans.

(2) *Investment performance rating.* The appropriate Federal banking agency assigns each savings association's investment performance one of the five following ratings.

(i) *Outstanding.* The appropriate Federal banking agency rates a savings association's investment performance "outstanding" if, in general, it demonstrates:

(A) An excellent level of qualified investments, particularly those that are not routinely provided by private investors, often in a leadership position;

(B) Extensive use of innovative or complex qualified investments; and

(C) Excellent responsiveness to credit and community development needs.

(ii) *High satisfactory.* The appropriate Federal banking agency rates a savings association's investment performance "high satisfactory" if, in general, it demonstrates:

(A) A significant level of qualified investments, particularly those that are not routinely provided by private investors, occasionally in a leadership position;

(B) Significant use of innovative or complex qualified investments; and

(C) Good responsiveness to credit and community development needs.

(iii) *Low satisfactory.* The appropriate Federal banking agency rates a savings association's investment performance "low satisfactory" if, in general, it demonstrates:

(A) An adequate level of qualified investments, particularly those that are not routinely provided by private investors, although rarely in a leadership position;

(B) Occasional use of innovative or complex qualified investments; and

(C) Adequate responsiveness to credit and community development needs.

(iv) *Needs to improve.* The appropriate Federal banking agency rates a savings association's investment performance

“needs to improve” if, in general, it demonstrates:

(A) A poor level of qualified investments, particularly those that are not routinely provided by private investors;

(B) Rare use of innovative or complex qualified investments; and

(C) Poor responsiveness to credit and community development needs.

(v) *Substantial noncompliance.* The appropriate Federal banking agency rates a savings association’s investment performance as being in “substantial noncompliance” if, in general, it demonstrates:

(A) Few, if any, qualified investments, particularly those that are not routinely provided by private investors;

(B) No use of innovative or complex qualified investments; and

(C) Very poor responsiveness to credit and community development needs.

(3) *Service performance rating.* The appropriate Federal banking agency assigns each savings association’s service performance one of the five following ratings.

(i) *Outstanding.* The appropriate Federal banking agency rates a savings association’s service performance “outstanding” if, in general, the savings association demonstrates:

(A) Its service delivery systems are readily accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has improved the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) are tailored to the convenience and needs of its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It is a leader in providing community development services.

(ii) *High satisfactory.* The appropriate Federal banking agency rates a savings association’s service performance “high satisfactory” if, in general, the savings association demonstrates:

(A) Its service delivery systems are accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides a relatively high level of community development services.

(iii) *Low satisfactory.* The appropriate Federal banking agency rates a savings association’s service performance “low satisfactory” if, in general, the savings association demonstrates:

(A) Its service delivery systems are reasonably accessible to geographies and individuals of different income levels in its assessment area(s);

(B) To the extent changes have been made, its record of opening and closing branches has generally not adversely affected the accessibility of its delivery systems, particularly in low- and moderate-income geographies and to low- and moderate-income individuals;

(C) Its services (including, where appropriate, business hours) do not vary in a way that inconveniences its assessment area(s), particularly low- and moderate-income geographies and low- and moderate-income individuals; and

(D) It provides an adequate level of community development services.

(iv) *Needs to improve.* The appropriate Federal banking agency rates a savings association’s service performance “needs to improve” if, in general, the savings association demonstrates:

(A) Its service delivery systems are unreasonably inaccessible to portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

(B) To the extent changes have been made, its record of opening and closing branches has adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income

geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) vary in a way that inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides a limited level of community development services.

(v) *Substantial noncompliance.* The appropriate Federal banking agency rates a savings association's service performance as being in "substantial noncompliance" if, in general, the savings association demonstrates:

(A) Its service delivery systems are unreasonably inaccessible to significant portions of its assessment area(s), particularly to low- or moderate-income geographies or to low- or moderate-income individuals;

(B) To the extent changes have been made, its record of opening and closing branches has significantly adversely affected the accessibility of its delivery systems, particularly in low- or moderate-income geographies or to low- or moderate-income individuals;

(C) Its services (including, where appropriate, business hours) vary in a way that significantly inconveniences its assessment area(s), particularly low- or moderate-income geographies or low- or moderate-income individuals; and

(D) It provides few, if any, community development services.

(c) *Wholesale or limited purpose savings associations.* The appropriate Federal banking agency assigns each wholesale or limited purpose savings association's community development performance one of the four following ratings.

(1) *Outstanding.* The appropriate Federal banking agency rates a wholesale or limited purpose savings association's community development performance "outstanding" if, in general, it demonstrates:

(i) A high level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Extensive use of innovative or complex qualified investments, com-

munity development loans, or community development services; and

(iii) Excellent responsiveness to credit and community development needs in its assessment area(s).

(2) *Satisfactory.* The appropriate Federal banking agency rates a wholesale or limited purpose savings association's community development performance "satisfactory" if, in general, it demonstrates:

(i) An adequate level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Occasional use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Adequate responsiveness to credit and community development needs in its assessment area(s).

(3) *Needs to improve.* The appropriate Federal banking agency rates a wholesale or limited purpose savings association's community development performance as "needs to improve" if, in general, it demonstrates:

(i) A poor level of community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) Rare use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Poor responsiveness to credit and community development needs in its assessment area(s).

(4) *Substantial noncompliance.* The appropriate Federal banking agency rates a wholesale or limited purpose savings association's community development performance in "substantial noncompliance" if, in general, it demonstrates:

(i) Few, if any, community development loans, community development services, or qualified investments, particularly investments that are not routinely provided by private investors;

(ii) No use of innovative or complex qualified investments, community development loans, or community development services; and

(iii) Very poor responsiveness to credit and community development needs in its assessment area(s).

(d) *Savings associations evaluated under the small savings association performance standard*—(1) *Lending test ratings.* (i) *Eligibility for a satisfactory lending test rating.* The appropriate Federal banking agency rates a small savings association's lending performance "satisfactory" if, in general, the savings association demonstrates:

(A) A reasonable loan-to-deposit ratio (considering seasonal variations) given the savings association's size, financial condition, the credit needs of its assessment area(s), and taking into account, as appropriate, other lending-related activities such as loan originations for sale to the secondary markets and community development loans and qualified investments;

(B) A majority of its loans and, as appropriate, other lending-related activities, are in its assessment area;

(C) A distribution of loans to and, as appropriate, other lending-related activities for individuals of different income levels (including low- and moderate-income individuals) and businesses and farms of different sizes that is reasonable given the demographics of the savings association's assessment area(s);

(D) A record of taking appropriate action, when warranted, in response to written complaints, if any, about the savings association's performance in helping to meet the credit needs of its assessment area(s); and

(E) A reasonable geographic distribution of loans given the savings association's assessment area(s).

(ii) *Eligibility for an "outstanding" lending test rating.* A small savings association that meets each of the standards for a "satisfactory" rating under this paragraph and exceeds some or all of those standards may warrant consideration for a lending test rating of "outstanding."

(iii) *Needs to improve or substantial noncompliance ratings.* A small savings association may also receive a lending test rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standard for a "satisfactory" rating.

(2) *Community development test ratings for intermediate small savings associations*—(i) *Eligibility for a satisfactory community development test rating.* The appropriate Federal banking agency rates an intermediate small savings association's community development performance "satisfactory" if the savings association demonstrates adequate responsiveness to the community development needs of its assessment area(s) through community development loans, qualified investments, and community development services. The adequacy of the savings association's response will depend on its capacity for such community development activities, its assessment area's need for such community development activities, and the availability of such opportunities for community development in the savings association's assessment area(s).

(ii) *Eligibility for an outstanding community development test rating.* The appropriate Federal banking agency rates an intermediate small savings association's community development performance "outstanding" if the savings association demonstrates excellent responsiveness to community development needs in its assessment area(s) through community development loans, qualified investments, and community development services, as appropriate, considering the savings association's capacity and the need and availability of such opportunities for community development in the savings association's assessment area(s).

(iii) *Needs to improve or substantial noncompliance ratings.* An intermediate small savings association may also receive a community development test rating of "needs to improve" or "substantial noncompliance" depending on the degree to which its performance has failed to meet the standards for a "satisfactory" rating.

(3) *Overall rating*—(i) *Eligibility for a satisfactory overall rating.* No intermediate small savings association may receive an assigned overall rating of "satisfactory" unless it receives a rating of at least "satisfactory" on both the lending test and the community development test.

(ii) *Eligibility for an outstanding overall rating.* (A) An intermediate small

savings association that receives an “outstanding” rating on one test and at least “satisfactory” on the other test may receive an assigned overall rating of “outstanding.”

(B) A small savings association that is not an intermediate small savings association that meets each of the standards for a “satisfactory” rating under the lending test and exceeds some or all of those standards may warrant consideration for an overall rating of “outstanding.” In assessing whether a savings association’s performance is “outstanding,” the appropriate Federal banking agency considers the extent to which the savings association exceeds each of the performance standards for a “satisfactory” rating and its performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s).

(iii) *Needs to improve or substantial noncompliance overall ratings.* A small savings association may also receive a rating of “needs to improve” or “substantial noncompliance” depending on the degree to which its performance has failed to meet the standards for a “satisfactory” rating.

(e) *Strategic plan assessment and rating*—(1) *Satisfactory goals.* The appropriate Federal banking agency approves as “satisfactory” measurable goals that adequately help to meet the credit needs of the savings association’s assessment area(s).

(2) *Outstanding goals.* If the plan identifies a separate group of measurable goals that substantially exceed the levels approved as “satisfactory,” the appropriate Federal banking agency will approve those goals as “outstanding.”

(3) *Rating.* The appropriate Federal banking agency assesses the performance of a savings association operating under an approved plan to determine if the savings association has met its plan goals:

(i) If the savings association substantially achieves its plan goals for a satisfactory rating, the appropriate Federal banking agency will rate the savings association’s performance under the plan as “satisfactory.”

(ii) If the savings association exceeds its plan goals for a satisfactory rating and substantially achieves its plan goals for an outstanding rating, the appropriate Federal banking agency will rate the savings association’s performance under the plan as “outstanding.”

(iii) If the savings association fails to meet substantially its plan goals for a satisfactory rating, the appropriate Federal banking agency will rate the savings association as either “needs to improve” or “substantial noncompliance,” depending on the extent to which it falls short of its plan goals, unless the savings association elected in its plan to be rated otherwise, as provided in §195.27(f)(4).

#### APPENDIX B TO PART 195—CRA NOTICE

(a) *Notice for main offices and, if an interstate savings association, one branch office in each state.*

##### *Community Reinvestment Act Notice*

Under the Federal Community Reinvestment Act (CRA), the [Office of the Comptroller of the Currency (OCC) or Federal Deposit Insurance Corporation (FDIC)] evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The [OCC or FDIC] also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA, including, for example, information about our branches, such as their location and services provided at them; the public section of our most recent CRA Performance Evaluation, prepared by the [OCC or FDIC]; and comments received from the public relating to our performance in helping to meet community credit needs, as well as our responses to those comments. You may review this information today.

At least 30 days before the beginning of each quarter, the [OCC or FDIC] publishes a nationwide list of the savings associations that are scheduled for CRA examination in that quarter. This list is available from the [OCC Deputy Comptroller (address) or FDIC appropriate regional director (address)]. You

may send written comments about our performance in helping to meet community credit needs to (name and address of official at savings association) and the [OCC Deputy Comptroller (address) or FDIC appropriate regional director (address)]. Your letter, together with any response by us, will be considered by the [OCC or FDIC] in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the [OCC Deputy Comptroller or FDIC appropriate regional director]. You may also request from the [OCC Deputy Comptroller or FDIC appropriate regional director] an announcement of our applications covered by the CRA filed with the [OCC or FDIC]. We are an affiliate of (name of holding company), a savings and loan holding company. You may request from the (title of responsible official), Federal Reserve Bank of \_\_\_\_\_ (address) an announcement of applications covered by the CRA filed by savings and loan holding companies.

(b) *Notice for branch offices.*

*Community Reinvestment Act Notice*

Under the Federal Community Reinvestment Act (CRA), the [Office of the Comptroller of the Currency (OCC) or Federal Deposit Insurance Corporation (FDIC)] evaluates our record of helping to meet the credit needs of this community consistent with safe and sound operations. The [OCC or FDIC] also takes this record into account when deciding on certain applications submitted by us.

Your involvement is encouraged.

You are entitled to certain information about our operations and our performance under the CRA. You may review today the public section of our most recent CRA evaluation, prepared by the [OCC or FDIC] and a list of services provided at this branch. You may also have access to the following additional information, which we will make available to you at this branch within five calendar days after you make a request to us: (1) A map showing the assessment area containing this branch, which is the area in which the [OCC or FDIC] evaluates our CRA performance in this community; (2) in-

formation about our branches in this assessment area; (3) a list of services we provide at those locations; (4) data on our lending performance in this assessment area; and (5) copies of all written comments received by us that specifically relate to our CRA performance in this assessment area, and any responses we have made to those comments. If we are operating under an approved strategic plan, you may also have access to a copy of the plan.

[If you would like to review information about our CRA performance in other communities served by us, the public file for our entire savings association is available at (name of office located in state), located at (address).]

At least 30 days before the beginning of each quarter, the [OCC or FDIC] publishes a nationwide list of the savings associations that are scheduled for CRA examination in that quarter. This list is available from the [OCC Deputy Comptroller (address) or FDIC appropriate regional office (address)]. You may send written comments about our performance in helping to meet community credit needs to (name and address of official at savings association) and the [OCC or FDIC]. Your letter, together with any response by us, will be considered by the [OCC or FDIC] in evaluating our CRA performance and may be made public.

You may ask to look at any comments received by the [OCC Deputy Comptroller or FDIC appropriate regional director]. You may also request an announcement of our applications covered by the CRA filed with the [OCC Deputy Comptroller or FDIC appropriate regional director]. We are an affiliate of (name of holding company), a savings and loan holding company. You may request from the (title of responsible official), Federal Reserve Bank of \_\_\_\_\_ (address) an announcement of applications covered by the CRA filed by savings and loan holding companies.

[85 FR 34809, June 5, 2020]

EFFECTIVE DATE NOTE: At 85 FR 34809, June 5, 2020, appendix C was added to part 25, effective until Jan. 1, 2024.